

# **LEGAL COMPARISON OF SHIP REGISTRATION RULES IN RUSSIA AND NORWAY**



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## **Foreword**

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## 1 Introduction

### 1.1 Why ship registration is important

Registration of a ship may be considered as an act which causes certain rights and obligations to arise, to change or to terminate. It should also be agreed that ship registration “generally involves the recognition and protection of the shipowner’s title to the vessel as well as the conferment of nationality”<sup>1</sup>. Accordingly ship registration is important for both public and private relations.

With regard to public relations ship registration defines both which state may be held responsible and public duties of a private party (i.e. a registered owner of a ship).

One of the most important functions of a ship registration with respect to a state is “the allocation of a vessel to a specific State and its subjection to a single jurisdiction for the purposes”<sup>2</sup>. For example, certain safety regulations and responsibilities of a flag state are provided by International Convention for the Safety of Life at Sea, 1974, International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 and International Convention on Load Lines, 1966. In general, a flag state’s responsibilities are defined under Article 94 of United Nations Convention on the Law of the Sea, 1982 (UNCLOS).

The link between a ship registration and certain public duties with regard to a private party may be found in, for example, International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto. Under Annex 1

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<sup>1</sup> Coles, p.4-5.

<sup>2</sup> Coles, p.6.

Regulation 4(c) of MARPOL 73/78, a ship owner shall report in case of an accident that occurs with a ship.

It should be however noted that the above mentioned rules do not apply a term of “a state of registration” but refer to a flag state. The distinction among a ship’s flag, ship’s registration and nationality of a ship is made as well in Article 91(a) of UNCLOS.

Under Article 91(a) of UNCLOS every state shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag.

Accordingly a question arises about a difference among terms of a ship’s flag, a ship registration and nationality of a ship and whether the rules referred to a state flag apply as well to a state of a ship registration.

As it was mentioned above every state fixes its own rules with regard to nationality of ships, for the registration of ships in its territory, and for the right to fly its flag.

Considering also that a ship may not change its flag during a voyage or while in a port of call save for the case of a real transfer of ownership or change of registry<sup>3</sup>, it may be assumed that the national rules usually provide for ship registration as a precondition for granting the further right to fly the state flag and the state nationality.

For example, both in Norway and Russia a ship may fly a state flag only after prior registration with one of ship registers<sup>4</sup>. Consequently a flag state and a state where a ship is registered is in fact one and the same state and the reference to a flag state may thus be considered as the reference to a state of registration.

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<sup>3</sup> Article 4(5) of Ship Registration Convention and Article 92(1) of UNCLOS.

<sup>4</sup> Section 15(2) of the NMC and Article 16 (1) of the RF MSC.

The same can be concluded based on Ship Registration Convention 1986. Although Ship registration Convention defines “the flag State” and “the State of registration” differently<sup>5</sup> it makes no distinction in application of these terms (for example in Articles 7, 8 and 9 of Ship Registration Convention).

In private relations ship registration is of importance for different kinds of contracts (for example, shipbuilding contracts, sale and purchase, charters, insurance agreements, management agreements) and torts.

With regard to contract relations, a ship registration matters as “the protection of the title of the registered owner, preservation of priorities between persons holding security interests over the vessel”<sup>6</sup> and as identification of a vessel. The effectiveness of a ship registration system is of specific importance for prospective mortgagees and they may object to ship registration in certain ship registers<sup>7</sup>.

The identification function of the ship registration is reflected in the Ship Registration Convention. Under Article 6 of the Ship Registration Convention, the state of registration shall enter in its register of ships, *inter alia*, information concerning the ship and its owner or owners. Information concerning the operator, when the operator is not the owner, should be included in the register of ships or in the official record of operators to be maintained in the office of the Registrar or be readily accessible to him, in accordance with the laws and regulations of the State of registration.

Although the Ship Registration Convention has not yet come into force, certain ship registers<sup>8</sup> follow the above mentioned rule and contain information which may be of importance to a party at entering a ships sale and purchase agreement, a charter or an insurance agreement.

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<sup>5</sup> Article 2 of Ship Registration Convention.

<sup>6</sup> Coles, p.7.

<sup>7</sup> Goldrein, p. 307.

<sup>8</sup> For example, under Article 39 of the RF MSC, the register of ships should contain information about a shipowner, its address, any registered encumbrances of the ship, and other details.



The identification function of the ship registration is also important for relationships founded on a tort. For example, under International Convention on Civil Liability for Oil Pollution Damage, 1969, it is a registered owner of a vessel who bears a liability in case of oil pollution.

## 1.2 Scope and purpose of this thesis

This thesis will concentrate on discussion and legal analysis of Norwegian and Russian regulations with regard to registration of ships and rights to the ships in different registers of ships.

The interest to the subject is explained by difference in approaches of Russia and Norway with regard to the same issues of regulation on the one hand and certain common features in the systems of ship registration on the other hand.

The purpose of this thesis is, *inter alia*, to compare the national rules of Norway and Russian, disclose any distinctions between them and discuss any implications of such differences with regard to interested parties.

This work will specifically concentrate on importance and effects of registration of ships with regard to rights and obligations based on shipbuilding contracts, ship sale and purchase agreements.

Although the registration of ships and the rights thereto is closely connected with registration of restrictions (encumbrances) to such rights, this thesis will not discuss the registration of restrictions (encumbrances) in detail due to the set word limit.

The thesis will start from discussion of general issues with regard to ship registration and will then proceed to specific registers of ships in Russia and Norway.

## **2 Chapter 1 Legal framework for ship registration**

The following two sections of this chapter will briefly describe national rules of Russia and Norway with regard to ship registration. Ship registration rules with regard to particular registers of ships will be discussed in more detail in the following chapters of this thesis.

### **2.1 Ship registration rules applicable in Russia**

Registration of ships and rights thereto in Russia is regulated by Chapter 3 of the Merchant Shipping Code of the Russian Federation (the RF MSC), Rules on registration of ships and rights thereto in seaports (Ships registration rules), and Rules on registration of fishing vessels and rights thereto in sea fishing ports (Fishing ships registration rules).

Besides regulatory acts, Russian public authorities may issue recommendations, explanatory notes and other documents which apply in registration of ships for interpretation purposes<sup>9</sup>.

Under Article 33 of the RF MSC, a ship should be registered in one of the registers of ships. Namely, this should be *(i)* the State Register of Ships; *(ii)* a ship book; *(iii)* a Bareboat charter Register; or *(iv)* the Russian International Register of Ships. As registration of rights to ships under construction is not mandatory under Russian law, Article 33 of the RF MSC does not mention a register for ships under construction here. The existence of such a register is confirmed however by other provisions of the RF MSC (for example, Articles 76, 377), Chapter VI of Ship registration rules and Chapter V of Fishing ships registration rules.

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<sup>9</sup> For example, the Letter of the RF Transport Ministry “On application of Russian laws and problems arising at bareboat chartering [...]”.

Accordingly a ship should and may be registered only in one of the four Russian registers of ships mentioned above. A common precondition for ship registration in one of the registers of ships mentioned above (except a register for ships under construction) is that a construction should fall under the ship definition as provided by Article 7 of the RF MSC.

Under Article 7 of the RF MSC, a ship shall imply a self-propelled or a non self-propelled floating construction used for merchant shipping. A fishing vessel shall imply a ship used for fishery, transport, auxiliary ship and a ship of special purpose.

The State ship register shall include only self-propelled ships with minimum main engine capacity of 55 kilowatt and non self-propelled ships of tonnage not less than 80 tonnes, except sporting and pleasure boats used for noncommercial purposes.

The State ship register shall include only self-propelled ships with minimum main engine capacity of 55 kilowatt and non self-propelled ships of tonnage not less than 80 tonnes, except sporting and pleasure boats used for noncommercial purposes.

A ship book shall include any sports and pleasure boats, yachts included, and also any other ships not included into the State ship register.

Considering that commercial fleet consists mainly of self-propelled ships with main engine capacity of not less than 55 kilowatt, this thesis will not further discuss registration of non self-propelled ships and registration of ships with a ship book.

Usually a ship and/or the rights to a ship may be registered in the register of ships in any of the Russian ports. The exclusions concern registration of fishing ships and ships under construction. Fishing ships or the rights thereto should be registered at the same Russian region (the RF constituent) as the owner or a bareboat charterer of a fishing ship (item 8 of Fishing ships registration rules). The rights to a ship under construction may be registered

at the port which is most closely located to the respective shipyard (item 5 of Ship registration rules and item 9 of Fishing ships registration rules).

Information contained in any of the Russian registers of ships is open and may be received by any interested person in the form of an extract.

As it will be discussed below in more detail, presently administrations of Russian ports are being reorganized and eventually the registration of ships should be carried out by harbour masters of seaports and based only on Ship registration rules (Articles 33(4), 35(1) of the RF MSC). Under Article 33(4) of the RF MSC it follows thus that Fishing ships registration rules are not applicable any more. Accordingly and given also that Ship registration rules and Fishing ships registration rules contain similar provisions, it seems advisable not to discuss Fishing ships registration rules any further.

## 2.2 Ship registration rules applicable in Norway

Ship registration in Norway is regulated by Chapter 2 of the Norwegian Maritime Code (the NMC), the Regulations relating to the Registration of Ships in the Norwegian Ordinary Ship Register (the NOR regulations), the Regulations relating to the Registration of Ships in the Norwegian International Ship Register (the NIS regulations), the Act relating to a Norwegian International Ship Register (the NIS Act) and the Act Relating to Registration and Marking of Fishing-Vessels (the Fishing vessels registration Act).

Under second paragraph of Section 11 of the NMC every Norwegian ship of a maximum length of 15 meters or more shall be registered in the Register of Ships (the NOR) or in the Norwegian International Ship Register (the NIS). Accordingly if *(i)* a ship is Norwegian, *(ii)* her length equals to or exceeds 15 meters, *(iii)* conditions for registration in the NIS or the NOR are satisfied, and *(iv)* the ship is not registered in any other register of ships then such a ship is subject to mandatory registration in the NOR or the NIS.

Accordingly a starting point for the ship registration in Norway is nationality of a ship. A nationality of a ship is regulated in detail in Section 1 of the NMC. A ship may be considered as Norwegian if, for example, it is owned by a Norwegian national, or a Norwegian company if at least six tenths thereof is owned by Norwegian nationals.

Notably that nationals and companies of contracting parties to the European Economic Area Agreement may likewise register a ship in Norway.

In addition to mandatory registration, the Norwegian law provides for voluntary registration with the NOR with regard to the following kinds of ships/constructions: *(i)* ships with a length less than 15 meters but not less than 7 meters, *(ii)* ship which must be registered under the Fishing vessels registration Act, *(iii)* ships to be used only or mainly in trade, *(iv)* floating cranes, floating docks, dredgers, *(v)* floating installations and hovercrafts, *(vi)* permanent installations for exploration and exploitation of subsea natural resources, *(vii)* drilling rigs and similar moving platforms.

In accordance with Section 8 of the NMC, a shipowner may choose a home port out of Norwegian ports approved by the Norwegian Maritime Directorate (the NMD).

Further this thesis will not consider Norwegian registration rules for floating cranes, floating docks, dredgers, floating installations, hovercrafts, permanent installations for exploration and exploitation of subsea natural resources, drilling rigs and similar moving platforms.

### **3 Chapter 2 Ship registration authorities**

The following three sections of this chapter will focus on ship registration authorities in Russia and Norway and describe their functions.

#### **3.1 Ship registration authorities in Russia**

Under Articles 35 and 76 of the RF MSC the registration of ships and the rights thereto is carried out by a harbour master of a respective Russian port.

Every harbour master is appointed and accounts to the Federal agency of the sea and river transport of the RF which is a part of the Transport Ministry of the RF. The activity of a harbor master in more detail is regulated by the Regulations on a Harbor master of a sea port (the Harbor master regulations).

The functions of a harbor master are described in Article 76 of the RF MSC and item 13 of the Harbour master regulations. A harbour master provides, *inter alia*, safety of navigation and order in Russian ports, control over pilot services, ship inspections. Registration of ships and rights thereto is an exclusive function of a harbour master and may not be shared with any other authority.

Under item 9 of the Harbor master regulations and item 11 of Ship registration rules, a harbor master performs its functions, *inter alia*, registration of ships and rights thereto with a help of a Harbour master service. The Harbor master service is not an independent legal entity but is a structural department of a sea port administration. A sea port administration which is established in any Russian port is a federal institution and is managed by the respective harbour master.

As it will be discussed below, along with a harbour master certain ship registration cases may be connected with the Federal service for the transport surveillance in the Russian Federation (the RF Transport surveillance service) and the Federal Fishing Agency.

The RF Transport surveillance service is a state legal entity and is a part of the Transport Ministry of the RF. Under item 13 of Ship registration rules and item 2 of the Decree of the RF Transport surveillance service on organization of registration, the RF Transport surveillance service performs organization of the ship registration and controls activity of harbour masters. The Federal Fishing Agency is a federal executive body which is not included into the transport or any other Russian ministry but is a separate body within the Russian Government<sup>10</sup>.

Although the RF Transport surveillance service and the Federal Fishing Agency issue permits for registration of ships in the RF Bareboat charter Register and the Russian International Register of Ships and carry out certain controlling functions over harbour masters, they may not perform the ship registration themselves and thus should not be considered as ship registration authorities.

It should be noted that up till recently ship registration function was divided between harbor masters of commercial seaports and fishing ports depending on a kind of a ship. That meant namely that fishing vessels and rights thereto were registered by harbor masters of fishing ports whereas other sea going ships were registered by harbor masters of commercial seaports. However in accordance with Article 10 (3) of a new Federal Law “On the sea ports in the Russian Federation and introduction of amendments to certain legislative acts of the Russian Federation” (the Seaport Law) and Decree of the Government of the Russian Federation “On improvement of state executive system of fishing ports” the registration with regard to fishing and other sea going ships was integrated and delegated to harbor masters of commercial seaports (seaports).

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<sup>10</sup> The structure of the Russian Government is regulated by the Decree of the RF President on Issues of system and structure of the federal executive bodies.

Although under Article 41 of the Seaport Law an integration of seaports and fishing ports should have started in November 2007, currently many harbour masters of fishing ports still function and perform registration of fishing vessels. Up till now the integration between seaports and fishing ports was completed in Russian ports of Vladivostok and Nakhodka<sup>11</sup>.

Considering that integration of fishing and seaports has not completed as soon as it was expected and still continues in many Russian ports, it may be difficult to define a proper registration authority with regard to fishing vessels in ports where the reorganization has not yet finished.

On the other hand, harbour masters of still existing fishing ports make entries about registration into the same State Register of ships as harbour masters of seaports. Accordingly it should be assumed that once a harbour master of a fishing port accepted documents from an applicant and made a registration entry, such an entry should be considered as valid and may be argued only in the court (Article 33(3) of the RF MSC).

### 3.2 Ship registration authorities in Norway

Under Section 3 of the NOR regulations and Section 4 of the NIS regulations, ship registration is performed by an official appointed by the Norwegian Ministry of Trade and Industry as a Registrar. The Registrar is a separate administrative agency and has offices in Bergen.

The Registrar may delegate the registration authority to another official at the Registrar's office. However, decisions to refuse registration of a document, decisions to make corrections, decisions on appeals, and any other decision that may give rise to doubt, must always be made by the Registrar.

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<sup>11</sup> Ports Integration at: <http://seanews.ru/news/news.asp?newsID=59029>



Considering the above it should be concluded that Norwegian registration authorities, i.e. the Registrar is a centralized official body located in Bergen and has no other functions save for the ship registration.

As any vessel to be registered in the NIS or the NOR should comply with certain safety regulations, the Registrar closely cooperates with the NMD who has no registration authority<sup>12</sup>.

### 3.3 Summary with regard to differences

Comparing two different structures of ship registration authorities in Russia and Norway it is difficult to conclude which system is better and whether any of the systems could be applied in another country. It seems that an ability to register a ship and rights thereto in the respective Russian port is more convenient for Russian extensive territory.

However, the scope of functions delegated to the ship registration authorities should not be too broad and should not affect the process of ship registration.

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<sup>12</sup> The NMD functions at: [http://www.sjofartsdir.no/en/About\\_the\\_Norwegian\\_Maritime\\_Directorate/](http://www.sjofartsdir.no/en/About_the_Norwegian_Maritime_Directorate/)

## **4 Chapter 3 Ship registration with the State Register of ships in Russia and the Norwegian Ordinary Ship Register**

The following three sections of this chapter will consider conditions for the registration of ship in the State Register of ships in the Russian Federation (the RF SRS), the Norwegian Ordinary Ship Register (the NOR) and discuss distinctions between them.

### **4.1 Ship registration with the RF SRS**

The conditions for the ship registration with the RF SRS are regulated in Chapter 3 of the RF MSC and Part 3 of the Ship registration rules.

#### **4.1.1 Who may register a ship with the RF SRS**

Under Article 15(1) of the RF MSC the right to fly the Russian flag may be granted to ships which belong to Russian nationals, Russian companies, the Russian Federation, the Russian Federation' constituents and municipalities. Under Article 16(1) of the RF MSC the ship may fly the Russian flag as from the date of her registration in one of the Russian ship registers, including the RF SRS. Accordingly a ship may not be registered with the RF SRS if she is owned by a non Russian citizen or company, a foreign state or other foreign establishment.

The same conclusion follows from Article 47(1) of the RF MSC which provides the exclusion of a ship from the RF SRS in case the ship no longer belongs to a Russian national or Russian company.

The provisions of Articles 15(1), 16(1) and 47(1) of the RF MSC comply thus with Article 91(1) of UNCLOS to the effect that every state shall fix its conditions for the registration of ships in its territory. The mentioned provisions comply as well with Article 10(1) of Ship

Registration Convention which provides for the economic link between a ship and a flag state, i.e. participation of the flag state nationals in the ownership, manning and management with regard to the vessel<sup>13</sup>.

At the same time there seem to be no restrictions for the ship registration with the RF SRS in cases when a ship is owned by a Russian company which is partly or solely owned by a non Russian party.

Specific regulations however are provided for acquiring the control by the non Russian investors over the companies engaged in fishing activity. For example, under Article 6(40) and Article 7 of a new RF Law on foreign investments into the companies which have strategic importance for the security and safety of the state, the deals which provide a non Russian investor with a control over Russian companies engaged in fishing should be approved by an authorized body.

Under item 31 of Ship registration rules, the ship registration with the RF SRS should be carried out at the request of the owner of the ship or a person empowered by the shipowner. When registering encumbrances, and other property rights, except the right of ownership, the application may be filed by any interested party (item 27 of Ship registration rules).

#### 4.1.2 Registration procedure and documents

Under item 26 of Ship registration rules, the ship registration procedure includes the following stages: *(i)* filing and receipt of the required documents by the ship registration authority, *(ii)* legal examination of the submitted documents, finding of any discrepancies between any registered rights in the RF SRS and the rights to be registered and any grounds for the refusal or suspension of registration, *(iii)* making a registration entry into the RF SRS and issue of the registration documents to the applicant.

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<sup>13</sup> McConnell, p. 444.

Although certain documents are usually submitted to the registration authority in every case of the RF SRS registration (for example, completed application form, tonnage certificate, foundation documents of the company which applies, a power of attorney), other documents are usually defined on the case-by-case basis.

Considering that most often a title to a ship arises due to a shipbuilding contract or a sale and purchase agreement it seems reasonable to consider which documents for the RF SRS registration may be required in each case. Namely which documents are usually required in the case of a newbuilding registration and registration of a second hand vessel with the RF SRS.

#### 4.1.2.1 Newbuilding registration with the RF SRS

Under item 32 of Ship registration rules for the registration of a ship and the right thereto with the RF SRS, it is necessary to submit application form, tonnage certificate, the RF SRS questionnaire completed in accordance with the sample, the shipbuilding contract, the delivery protocol, any other document of title. Any other documents of title are more clearly specified in item 39 of Ship registration rules and may include certificate of inheritance, any court decisions prescribing the title, respective acts of the state bodies for the property management. Documents of title should demonstrate the transfer of title from the previous owner to a new one, i.e. to the applicant for the RF SRS registration. Ship registration rules do not provide thus the exhaustive list of documents but refer to other documents which may be requested.

At the same time items 21-23 of Ship registration rules specify the information which should be included into the RF SRS. For example the RF SRS should include information on the type of a ship, her trading area (item 21(д) of Ship registration rules), technical details of a ship (item 21(е) of Ship registration rules). It may be concluded thus that the registration authority will also request, *inter alia*, a Classification certificate and a Seaworthiness certificate.

Other important issues are the transfer of title to a newbuilding and the time of a newbuilding registration with the RF SRS.

It should be noted that under Russian law a ship is considered to be a real estate object (Article 130(1) of the Civil Code of the Russian Federation (the RF CC)) and her building and further delivery are subject to general rules of contractor's agreement (§1, Chapter 37 of the RF CC) and rules of construction agreement (§ 3, Chapter 37 of the RF CC).

Under Article 740(1) of the RF CC, a contractor is obliged to build a certain object and carry out other construction works in accordance with a principal's assignment whereas a principal is obliged to pay for the performed work and accept the result. At the same time under Article 703(2) of the RF CC, if a subject matter of a contractor's agreement is creation of something new, for example a building of a ship, then a contractor should transfer to a principal a new object and the rights thereto.

However, it should be noted that any right to a real estate object becomes effective only after its state registration (Article 4(1) of the Federal law on the state registration of the rights to real estate objects and the deals thereto and Article 8(2) of the RF CC).

Vessels and rights thereto are not however subject to state registration as provided for other real estate objects in Russia (Articles 4(1) and 33(1) of the Federal law on the state registration of the rights to real estate objects and the deals thereto ) but are registered in the order provided by the RF MSC (Article 33(1) of the Federal law on the state registration of the rights to real estate objects and the deals thereto and Article 33 (1), (4) of the RF MSC).

Accordingly the right to a ship becomes effective after its registration with one of the Russian Registers of ships. It could be concluded thus that a contractor, i.e. a shipbuilding yard may transfer the rights to a principal, i.e. a future shipowner with regard to a

newbuilding only after its registration. Thus there would seem to be no difference between the transfer of the right under a shipbuilding contract and a sale and purchase agreement.

However, under Article 218(1) of the RF CC (Grounds for acquiring of ownership), a person/company acquires ownership to a new object only if an object was created by such a person/company for itself. Considering that a shipbuilding yard constructs a vessel not for itself but for a future shipowner, it is assumed that the initial title to a vessel is acquired by a shipowner after registration of the ship by the shipowner<sup>14</sup>. Namely a shipbuilding yard performs a shipbuilding contract but does not become the owner of a ship.

Under Article 42 of the RF MSC a newbuilding should be registered with the RF SRS within one month after its launching. In accordance with item 29 of Ship registration rules the launching date shall imply the date when the delivery protocol is signed by a shipbuilding yard and a future shipowner. However it is evident that before a newbuilding can be registered it needs as well to obtain certain mandatory ship documents and information from the respective classification society and other authorized bodies. For example, a newbuilding before registration with the RF SRS should be assigned IMO number<sup>15</sup>, obtain a seaworthiness certificate, measurement and classification certificates (items 21, 32 of Ship registration rules). Accordingly in practice the term of one month is often extended<sup>16</sup>.

It should be noted that the RF MSC does not specify whether a term of one month after a newbuilding's launching extends as well to vessels built outside of Russia. As there is no requirement for a ship's presence in Russia at the time of her registration with the RF SRS and the delivery protocol may be signed in any place agreed it may be concluded thus that one month period after a newbuilding's launching should apply as well to ships built outside of Russia.

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<sup>14</sup> Commentary to the second part of the RF CC, p. 218

<sup>15</sup> IMO Number at: [http://www.imo.org/Facilitation/mainframe.asp?topic\\_id=388](http://www.imo.org/Facilitation/mainframe.asp?topic_id=388)

<sup>16</sup> Commentary to the RF MSC, p. 47

The RF MSC and Ship registration rules do not provide for any consequences in the case of late submission of the documents for the RF SRS registration. Likewise Article 46 of the RF MSC and item 48 of Ship registration rules do not mention late delivery of the documents as a ground for the refusal in the RF SRS registration. Accordingly if documents for the RF SRS registration are submitted later than required, the registration authorities may not refuse in accepting the documents and registration but may request explanation for the late delivery.

#### 4.1.2.2 Registration of a second hand vessel with the RF SRS

Although the RF MSC and Ship registration rules do not define a second hand vessel but for a purpose of this thesis a second hand vessel shall imply a vessel which has already been registered in any Russian or non Russian register of ships (safe for a register for ships under construction).

Ship registration rules provide the same basic documents for registration of a second hand vessel as for a newbuilding, save for certain different documents. The documents will differ as well depending on whether a new shipowner acquired a ship from a foreign or the Russian owner.

If the vessel was previously registered with the RF SRS, a new owner does not need to register a ship but needs to inform the registration authority about the change of ownership and register its title. This however under Ship registration rules does not release a new owner of a duty to provide the same documents as mentioned in 4.1.2.1. above, including a sale and purchase agreement and a delivery protocol.

Under item 30 of Ship registration rules, the shipowner should notify the registration authority about any change of information included into the ship register within two weeks after the shipowner learnt about such a change. Considering that information about owner of the ship is included into the RF SRS (item 22 of Ship registration rules) and its change becomes effective only after its registration with the RF SRS, the shipowner can not thus

technically notify the registration authority about the change of ownership before such change is in fact registered. At the same time the shipowner can notify the registration authority after the ship is actually transferred to a future owner, i.e. after execution of a delivery protocol. The same approach to registration is applied in Russia with regard to other real estate objects. For example under Article 564(2) of the RF CC (The transfer of title to enterprise) the title to the enterprise should be transferred to the buyer and registered immediately after the transfer of the enterprise to the buyer. The enterprise is deemed to be transferred as of the date the delivery protocol is signed by the parties (Article 563(2) of the RF CC).

Consequently, in the event the ownership is going to be changed, the RF SRS should be notified within two weeks after the transfer of the ship, i.e. after a delivery protocol was executed by the parties.

If the vessel was previously registered with the Russian International Register of ships or other register of ships outside of Russia in addition to the documents mentioned above in 4.1.2.1 (save for a shipbuilding contract), a new owner should provide a sale and purchase agreement, a delivery protocol, any other documents confirming the transfer of title.

Most important is that before a ship is registered with the RF SRS it should be deleted from the previous register of ships (Article 37(2) of the RF MSC, item 3 of Ship registration rules) and a deletion certificate should be submitted. This rule is quite common for ship registries and is reflected as well in Article 4(4) of Ship Registration Convention.

Under general Russian rules of sale and purchase agreement (Article 456(2) of the RF CC) it is a duty of a seller to provide a buyer with all documents pertaining to the subject matter of the contract. As a ship can not become the property of a new owner and be operated until she is registered with a new register of ships, a deletion certificate should be considered as one of such documents and thus should be provided by a seller, i.e. a previous owner.



Moreover, under the administrative practice of the Russian registration authorities a deletion certificate should bear the name of the seller as stated in the respective sale and purchase agreement. Such practice is supported by Article 46 of the RF MSC, which states that a ship may not be registered if a title document (for example a sale and purchase agreement) was issued by a person not entitled to dispose of a vessel. Accordingly, if a sale and purchase agreement is signed by one person or company as a seller and a deletion certificate states another person or company as the last authorized owner of a ship, the Russian registration authority should refuse to register a ship and rights of a new owner thereto.

It should also be noted that the RF MSC and Ship registration rules do not provide for the term of registration with regard to vessels acquired by a Russian buyer from a non Russian seller and to be registered with the RF SRS. Under the second part of Article 42 of the RF MSC, the ship acquired outside of Russia should be registered with the RF SRS within one month after her arrival at the Russian seaport. However, Article 42 of the RF MSC should be interpreted together with items 96-102 of Ship registration rules which provide the same term but specify more clearly its application. Under items 96-102 of Ship registration rules a one month term applies to the situation when a vessel was acquired outside of Russia and a new owner applied to the respective Russian consular establishment for the issue of provisional certificate to fly a Russian flag. The normal situation, however, is that registration takes place simultaneously with change of title of the ship.

The mentioned rules should not thus apply when a vessel was acquired from a non Russian seller and a Russian buyer intends to register the ship with the RF SRS. In the latter case there seems to be a gap in regulation and a new owner should apply to the RF SRS as soon as possible as its title to the ship becomes effective only after its registration with the RF SRS.

Along with the above mentioned documents the registration of a ship and the rights thereto with the RF SRS or deletion therefrom may be also carried out due to the court decision or

arbitration award which for example grants a title to a ship to a new owner (Article 8(1) of the RF CC). However if such a court decision or arbitration award was taken outside of Russia a ship or rights thereto may be registered with or deleted from the RF SRS only after a court decision or an arbitration award is properly recognized and enforced in Russia (Article III of the UN Convention on the recognition and enforcement of foreign arbitral awards<sup>17</sup>).

In the case of ship registration it is important to note that recognition and enforcement of a foreign court decision or award in Russia may be complicated or prevented due to certain reasons. For example under Article 244(1) of the Arbitrazh Procedure Code of the Russian Federation (the RF APC), the arbitrazh court in Russia should refuse to recognize and enforce a decision or award of a foreign court or tribunal if, *inter alia*, the hearing of the case is referred to the exclusive competence of the Russian court.

Under Article 248(1) of the RF APC if a dispute relates to a ship or the rights thereto and the ship is located in Russia<sup>18</sup> then such a dispute falls within the exclusive competence of the Russian court. This general rule of exclusive competence may however be changed by international treaty to which Russia and the other country, where the decision was taken, are the parties<sup>19</sup>. However if there is no such international treaty and the dispute falls within the exclusive competence of the Russian court then there is a risk that a new owner of a ship will not be able to register or delete a ship from the RF SRS and thus acquire a proper title to the vessel.

#### 4.2 Ship registration with the NOR

The conditions for the ship registration with the NOR are regulated by Chapter 2 of the NMC and NOR regulations.

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<sup>17</sup> Under USSR Decree on Ratification, this convention was ratified by USSR in 1960

<sup>18</sup> A ship is considered to be located in Russia if she is registered in one of the Russian ports, Neshataeva

<sup>19</sup> Neshataeva

#### 4.2.1 Who may register a ship with the NOR

The principal condition for the registration with the NOR is the Norwegian nationality of a ship. This follows from paragraph 1 Section 5 and paragraph 2 Section 11 of the NMC. Both rules provide for the Norwegian nationality of the ship to be registered with the NOR.

The nationality requirement in detail is regulated by Section 1 of the NMC and is based on the ownership and management criteria. The nationality requirement should guarantee the compliance with the Norwegian legislation and interests<sup>20</sup>.

#### 4.2.2 Registration procedure and documents

The registration procedure with the NOR is described in Section 14 of the NMC and Chapter 2 of the NOR regulations. Although the rules do not divide the procedure into the stages it is easy to determine the following stages: *(i)* filing of the required documents by the owner of the ship (Section 7 of the NOR regulations), *(ii)* examination of the documents, finding of any deficiencies (Section 13 of the NOR regulations), *(iii)* entry of the received documents into the journal in the chronological order (Section 11 of the NOR regulations), *(iv)* entry of the documents into the NOR (Section 14 of the NOR regulations), *(v)* issue and signing of a certificate of registration on every document registered (Section 21(1) of the NOR regulations, Section 17(1) of the NMC).

The ship is deemed to be registered at the moment the notification was entered in the journal of documents<sup>21</sup>. The registration of the ship should result in the issue of a Certificate of nationality (Section 7b(1) of the NOR regulations) by the ship registration authority (Section 5(3) of the NMC).

The NOR regulations similar to Russian law do not provide a unified and exhaustive list of documents for registration of a newbuilding and a second hand vessel. Accordingly it is advisable to discuss each case separately.

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<sup>20</sup> Falkanger, p. 58

<sup>21</sup> Falkanger, p. 64

#### 4.2.2.1 Registration of a newbuilding with the NOR

The list of documents required for a newbuilding registration with the NOR is, *inter alia*, defined by the information to be included into the register of ships. Under Section 13 of the NMC the ship register shall include information on the ship's name, identification signal, gross and net tonnage, information on the breadth, length and depth of the ship, ownership, information on the managing owner of the ship or the operating entity.

Based on Section 13 of the NMC, Section 7 of the NOR regulations specifies the particular documents to be provided for the ship registration. Namely, a completed application form based on the sample of the Norwegian Ministry of Trade and Industry, a tonnage certificate, the name certificate, a builder's certificate or other document proving the owner's title to the ship, document confirming the powers of the applicant to submit the documents.

Moreover, under Section 7a of the NOR regulations, the Certificate of nationality shall include details on IMO identification number, call sign. The ship should also comply with safety regulations (Article 94 (3), (4) of UNCLOS). Accordingly, similar to Russian ship registration, before applying for the ship registration with the NOR, a ship owner would have to obtain other documents and information, *inter alia*, IMO number, a seaworthiness and classification certificates. In the event a newbuilding was previously registered with the shipbuilding register, it is also necessary to submit a certificate of deletion<sup>22</sup>.

Another important issue concerns the time order in which a title to a newbuilding is transferred from a builder to a buyer and registration of a newbuilding with the NOR. Under general rule of Norwegian contract law the title to a newbuilding passes to a buyer at the delivery and acceptance of the ship (Article VIII(4), Article XI(1) of the Standard form of Shipbuilding contract 2000 (the Shipbuilding contract)<sup>23</sup>). The delivery and acceptance

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<sup>22</sup> Falkanger, p.64.

<sup>23</sup> Collection of Shipping documents, p.20-49

of a newbuilding is performed by execution of the protocol of delivery and acceptance by the seller (or a builder) and the buyer (Article VIII(2) of the Shipbuilding contract).

It should be noted that upon delivery and acceptance of the vessel, the builder should provide the buyer with certain documents, including the builder's certificate and classification certificate (Article VIII(3) of the Shipbuilding contract). This contract provision corresponds to the general practice<sup>24</sup> and helps the buyer promptly to register the ship with the NOR.

Under Section 12(1) of the NMC the owner of a newbuilding subject to mandatory registration should send a notice with the NOR within 30 days after delivery from the builder.

#### 4.2.2.2 Registration of a second hand vessel with the NOR

As was mentioned above the NMC and the NOR regulations provide a common list of documents for both a newbuilding and a second hand vessel registration with the NOR. Accordingly the registration with the NOR should require the same documents as mentioned above in 4.2.2.1 save for different title documents. The title documents required for registration should thus follow from general practice and be determined by the respective contract.

Under clause 8 of Saleform 1993<sup>25</sup>, the seller should provide the buyer with, *inter alia*, a bill of sale and current certificate of ownership as of the date of delivery of the vessel. At the date of delivery of the vessel the seller and the buyer should also sign the delivery and acceptance protocol (clause 8(3) of Saleform 1993). Accordingly the title of the buyer to the ship may be confirmed by the signed Saleform 1993, the protocol of delivery and acceptance and the bill of sale.

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<sup>24</sup> Curtis, p.29-30

<sup>25</sup> Although Saleform 1993 is governed by English law, it is widespread and reflects general practice. Collection of Shipping documents, p.10-15

It should also be noted that generally the NOR registration will require a deletion certificate (Section 7 (5), (6) of the NOR regulations) with regard to vessels previously registered with another not Norwegian registry, or the NIS. If the ship was not previously registered with another ship registry in Norway or outside of Norway, and was not transferred from abroad it is necessary to obtain a declaration and a certificate from the Registry of Moveable property about any enforcement proceedings and previous owners (Section 7(7) of the NOR regulations).

In the event the ship was previously registered with the NOR and still complies with the nationality requirement after the change of ownership, a new owner should notify the NOR and provide respective documents, for example a bill of sale (Section 13(2), (3) of the NMC). The notice should be made within 30 days after the change of ownership, i.e. after execution of the delivery protocol.

#### 4.3 Summary with regard to differences

Although there are some common rules in Russia and Norway regarding ship registration with the state registers of ships (i.e. the RF SRS and the NOR), for example information included in to the registry, recognition of the ship registration as the only evidence of the registered title to the ship, nationality requirement with regard to registered owner of the ship, prior deletion of the ship from the previous registry before her new registration, prior payment of the registration fee, duty of the owner of the ship to notify the registrar of certain changes, there are as well certain distinctions.

Firstly, Russian rules restrict the ownership to the ships to the Russian entities and nationals, but do not restrict participation of non Russian entities or nationals in such registered owners. As was mentioned above in 4.1.1 certain restriction concerns Russian companies engaged in fishing. This restriction however does not exclude a non Russian participation in such fishing company completely but provides for specific order for the share or interest acquisition therein.

Norwegian rules are stricter with regard to nationality requirement as restrict a non Norwegian participation in the ownership to forty per cent and provide for certain management requirements.

Secondly, the significance of ship registration in Norway and Russia is different.

Although certain ships under Norwegian law must be registered, a buyer still starts to own any acquired ship as soon as a delivery protocol is signed. Under Russian law a ship is deemed to be a real estate object and thus the transfer of the title to the ship becomes effective or stops to exist only after its entry or deletion in or from the register of ships. Accordingly, even after execution of the delivery protocol a Russian seller of the ship continues to own the ship until the ship and/or the right thereto is deleted from the register of ships. On the other hand, a buyer of the ship may not become the Russian owner until the ship and right thereto are registered. Accordingly, the ship may formally remain without any owner after the date of her deletion from the previous register of ships until the date of her registration with the RF SRS.

Thirdly, although both Russian and Norwegian rules provide the same time periods within which the owner should apply for the initial ship registration, Russian terms are twice shorter with regard to duty of the owner to notify the register of ships of any further changes.

It should also be noted that one month period prescribed for the initial ship registration with the RF SRS is usually not sufficient<sup>26</sup> as the owner firstly needs to obtain other documents (for example IMO number, classification certificate, seaworthiness certificate, tonnage certificate).

Lastly, under Section 14(5) of the NMC, if delivery of the vessel from the non Norwegian builder or seller is performed outside office hours, the ship may still be entered into the

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<sup>26</sup> Commentary to the RF MSC, p. 47

NOR provided the confirmation of delivery is submitted within one week. The documents submitted to the registration authority may be made, *inter alia*, in English.

The Russian rules do not provide for any provisional registration. Moreover all the submitted documents should be made in or translated into Russian. Accordingly the registration procedure with the RF SRS is less flexible than with the NOR.



## **5 Chapter 4 Ship registration with the Russian International Ship Register and the Norwegian International Ship Register**

The following three sections of this chapter will discuss conditions for the ship registration in the Russian International Ship Register (the RIS), the Norwegian International Ship Register (the NIS) and discuss distinctions between them.

### **5.1 Ship registration with the RIS**

The conditions for the ship registration with the RIS are provided in Chapter 3 of the RF MSC and Part 3 of Ship registration rules.

#### **5.1.1 Conditions for the RIS registration**

It should be noted that the RIS started to operate late in December 2005 after the adoption of the Federal Law On introduction of amendments in to certain laws of the Russian Federation due to creation of the Russian International Ship Register. However, the mentioned law has not created a new legal basis for the RIS registration but supplemented current rules with certain new provisions related to the RIS. For example, the law introduced respective amendments to the RF MSC, the Russian Federation Tax Code and certain customs regulations.

Accordingly most of the RF MSC rules and Ship regulations related to the registration procedure and documents are the same as for the RF SRS registration. It seems sensible thus not to discuss the common rules for the RF SRS and the RIS again but to focus on specific rules provided for the RIS.

##### **5.1.1.1 Who may register with the RIS and where**

The RF MSC and Ship regulations provide the same nationality requirement for the RIS registration as for the RF SRS registration. Namely, only Russian entities and nationals may apply to the RIS. However the registration with the RIS is possible either on the basis

of ownership or a bareboat charter (Articles 38(1), 40(3) of the RF MSC). In the latter case the ship may be owned by a non Russian entity or national and registered with the RIS by the Russian bareboat charterer.

Considering however that the RIS registration may not be performed by the foreign national or entity, the RIS does not seem to be a truly international register.

Under Article 35(3) of the RF MSC the RIS registration is possible only in certain Russian ports. The list of such ports is approved by the Russian Government<sup>27</sup> and is shorter than the list for the RF SRS registration. Currently the ship registration with the RIS is possible in twelve out of forty-three Russian ports where the RF SRS registration may be carried out.

#### 5.1.1.2 Trading limits of the ships registered with the RIS

The ship may be registered with the RIS if she is engaged in the international carriage of cargo, passengers, their luggage or other related activity. The mentioned international carriage includes as well chartering of the ship for the purpose of international carriage (Article 33(7) of the RF MSC). The other related activity may include as well towage, icebreaker assistance, salvage operations and cargo transshipment (item 59 of Ship registration rules).

The RF MSC does not define the international carriage but refers to the term of cabotage. Under Article 4(1) of the RF MSC the cabotage implies the carriage and towage between seaports of the Russian Federation. Accordingly, the meaning of international carriage or towage and rendering of other related services may be opposed to the cabotage and imply respective activity performed between one of the Russian seaports and non Russian seaports or between non Russian seaports. However, the question may arise then if the carriage or other activity between the Russian seaport and the destination located beyond the Russian seaport bounds but within the Russian territory or beyond the Russian territory

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<sup>27</sup> The list of the ports is specified in the RF Government Decree on the RIS seaports

but not included into another state's territory (for example exclusive economic zone, continental shelf) may be considered as international.

It should be noted that under international law, the international carriage usually takes place if the place of departure and the place of destination are located in different states or in the same state but if the immediate port of call is located in another state<sup>28</sup>. The similar understanding of international carriage is provided by certain Russian transport regulations<sup>29</sup>.

Moreover, Article 251(33) of the RF Tax Code for the purpose calculation of corporate profit tax defines the operation of a ship registered with the RIS as carriage of goods, passengers, their luggage and rendering of other related services provided that the place of departure and of destination are in and/or outside of Russia.

Accordingly, Article 33(7) of the RF MSC should be interpreted in the same way and the ship registered with the RIS should not only cross the bounds of the respective Russian seaport and Russian territory but also the bounds of another state and call at the respective port. Otherwise the ship registered with the RIS might probably not be excluded from the RIS immediately after breach of trading limits but the owner of such ship or the bareboat charterer would not be able to enjoy certain tax exemptions (for example the exemption from corporate profit tax).

The ship registered with RIS may however in certain cases perform the carriage and/or towage between Russian seaports (Article 4(2) of the RF MSC). This includes any cases provided by the international treaties of which the Russian Federation is a party or the cases provided by the Russian Government.

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<sup>28</sup> Article 1(9) of Athens Convention relating to the Carriage of Passengers and their luggage by Sea, 1974

<sup>29</sup> Article 101(2) of the Russian Federation Air Code and Article 2 (16), (17), (18) of the Bylaws of Railway Transport of the Russian Federation

Presently the ships registered with the RIS may perform the carriage and towage between Russian seaports if the carriage or towage must be performed by special ships which are not available at the RF SRS or if there is a need for the urgent carriage or towage which can not be performed by the ships registered with the RF SRS<sup>30</sup>.

The carriage or towage by the ships registered with the RIS between Russian seaports may be performed only after obtaining of the permit from the Federal agency for the sea and river transport<sup>31</sup>.

#### 5.1.1.3 Stamp duty for the RIS registration

The payment of the stamp duty is one of the conditions for the ship to be registered with the RF SRS and the RIS. However the extension of the RIS registration requires annual payments whereas the RF SRS registration does not need to be extended. The failure of the owner of the ship or the bareboat charterer to pay a stamp duty for the RIS registration extension forms one of the grounds for the ship to be excluded from the RIS (Article 47(2) of the RF MSC).

The amount of the stamp duty for the RIS registration and further extension depends on the ship gross tonnage and is specified by the RF Tax Code.

#### 5.1.2 The RIS registration procedure and requested documents

The RIS registration is much based on the same documents as mentioned in 4.1.2.1 and 4.1.2.2, i.e. completed application form, foundation documents of the ship owner or the bareboat charterer, certain ship documents (for example, seaworthiness certificate, classification certificate, tonnage certificate IMO number) and necessary powers of attorney. However, other requested documents will differ depending on whether the ship is to be registered on behalf of the owner or a bareboat charterer.

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<sup>30</sup> Provided by item 1 of the Decree of the RF Government on carriage and towage in cabotage by ships flying the flag of a foreign state or registered with the RIS

<sup>31</sup> Item 3 of the Decree of the RF Government on carriage and towage in cabotage by ships flying the flag of a foreign state or registered with the RIS

In the event the ship is registered on behalf of the owner, the owner also needs to present the same title documents and deletion certificate as mentioned above for the RF SRS registration (items 68, 21, 32 of Ship registration rules).

In the event the ship is registered on behalf of the bareboat charterer, the registration procedure and documents are much different as from already mentioned.

In the latter case the actual registration with a harbour master is preceded with obtaining of decision on provisional granting to the ship the right to fly the Russian flag (Article 15(2) of the RF MSC). Under Article 15(3) of the RF MSC the mentioned decision is granted either by the RF Transport surveillance service<sup>32</sup> or the Federal Fishing Agency<sup>33</sup> depending on the type of the vessel.

The mentioned decision is granted only if certain conditions are met (Article 15(2) of the RF MSC). Namely, that the bareboat charterer *(i)* complies with the nationality requirement, *(ii)* the owner of the ship and holders of any encumbrances currently registered in the respective register of ships agree that the ship will fly the Russian flag, *(iii)* the law of the country where the ship is registered does not prohibit the ship to fly the foreign flag, and *(iv)* the right of the ship to fly the flag of such country is suspended as of the date the Russian flag is granted.

Based on these requirements, the bareboat charterer needs thus to provide its foundation documents, state registration certificates, written consents of the owner of the ship and beneficiaries with regard to any registered encumbrances, written confirmation from the country of registration to the effect that the ship may fly the foreign flag and that the right of the ship to fly the flag of such country is suspended.

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<sup>32</sup> The power of the RF Transport surveillance service to grant the decision with regard to non fishing vessels is provided by item 5.4.3 of the Regulations on the RF Transport surveillance service

<sup>33</sup> The power of the Federal Fishing Agency to grant the decision with regard to fishing vessels is provided by item 5.5.19 of the Regulations on the RF Federal Fishing Agency

Although neither the RF MSC nor Ship registration rules do not specify any other documents or information to be submitted to the RF Transport surveillance service or the Federal Fishing Agency, in practice it is necessary to submit as well other documents provided for the actual ship registration with a harbour master.

Under Article 40(4), (2) of the RF MSC the RIS should include information on, *inter alia*, the owner of the ship, the bareboat charter, the registered rights as specified in the non Russian ship register. Accordingly, the bareboat charterer would have to provide to the RF Transport surveillance service, *inter alia*, a certificate on incorporation with regard the owner of the ship, the signed bareboat charter, an extract from the foreign ship register, confirmation from the foreign register to the effect that the right of the ship to fly the foreign flag is suspended.

Moreover, considering that under a bareboat charter the charterer undertakes commercial and technical management of the ship, the bareboat charterer is also to provide that the ship has a proper crew (Article 217 of the RF MSC), is properly insured (Articles 218(1), 219 of the RF MSC) and to comply with other national and international requirements (for example, that the ship complies with the International Safety Management Code 2002 approved by the IMO).

The provisional granting to the ship of the right to fly the Russian flag is limited by the term of the bareboat charter but may not exceed two years if the former is longer (Article 15(3) of the RF MSC).

Once the mentioned decision is granted by the RF Transport surveillance service or the Federal Fishing Agency, the bareboat charterer should apply to the harbour master.

As it follows from the above, if the registration with the RIS is carried out by the bareboat charterer, the legal examination of the documents is in fact performed by the RF Transport surveillance service or the Federal Fishing Agency but not by the harbour master.

Accordingly, the decision of whether the ship complies with the requirements and thus may be registered with the RIS is mainly taken by the RF Transport surveillance service or the Federal Fishing Agency. However, for the actual registration of the vessel with the RIS the bareboat charterer should still submit to the harbour master mainly the same documents as to the RF Transport surveillance service and the Federal Fishing Agency (item 68(2) of Ship registration rules).

The ship may be registered with the RIS either for a certain term or without specifying the term but the RIS registration should be confirmed every year (item 66 of Ship registration rules).

## 5.2 Ship registration with the NIS

The ship registration with the NIS is based on Chapter 2 of the NMC, but in more detail is regulated in the NIS Act and the NIS regulations.

### 5.2.1 Conditions for the NIS registration

The conditions for the NIS registration are mainly regulated by the NIS Act whereas the NMC contains general provisions about the registration authorities, procedure and documents. The NIS regulations provide in more detail for the registration procedure and documents.

Although there are significant distinctions in registration with the NOR and the NIS, there is no evident difference in the procedure and documents. Considering however that the ship may be registered with the NIS by the non Norwegian owner, the foundation and other corporate documents submitted by the applicant for the NIS registration may differ from those provided for the NOR registration.

The below discussion of the NIS registration will thus be concentrated on the NIS specific features different from the NOR.

#### 5.2.1.1 Who may register with the NIS

Under Section 1 of the NIS Act, the ship may be registered with the NIS by the Norwegian or not Norwegian shipowner. In the latter case the ship must be operated by the Norwegian shipping company with its head office in Norway or by the foreign company owned by the Norwegian shipping company with its head office in Norway.

The registration with the NIS is possible in the same home ports as with the NOR<sup>34</sup>.

#### 5.2.1.2 Trading limits of the ships registered with the NIS

Under Section 4 of the NIS Act the ships registered with the NIS may not carry cargo and passengers between Norwegian ports or perform the regular passenger carriages between Norwegian and foreign ports. The other trading areas may be provided by the King of Norway (Section 4(2) of the NIS Act).

The NIS Act specifies as well that oil and gas installations on the Norwegian continental shelf should be considered as Norwegian ports. Accordingly, the ships engaged in carriages between actual Norwegian ports and such installations may not be registered with the NIS.

#### 5.2.1.3 Fee for the NIS registration

Under Section 7 of the NIS regulations the fee for the initial NIS registration is based on the rates as defined by the Act relating to the Court fees. Similar to the RIS registration, the NIS registration is subject to annual fees (Section 7(3) of the NIS regulations). The annual fee should be paid by the owner of the ship or its representative as of 31 January each year.

### 5.3 Summary with regard to differences

It should first be noted that the creation of both the NIS and the RIS was caused, although in different times, by the wish of Norwegian and Russian governments to return its fleet from other more competitive ship registers. Moreover, the NIS was considered as one of the models for the RIS creation<sup>35</sup>. However both the NIS and the RIS are quite specific

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<sup>34</sup> Norwegian Seaports at: <http://www.nis-nor.no/NIS/Hjemsted.aspx>

<sup>35</sup> About the draft law for the RIS at: [http://www.mintrans.ru/pressa/Koll\\_000329.htm](http://www.mintrans.ru/pressa/Koll_000329.htm)



with regard to each other and also with regard to the NOR and the RF SRS respectively. Here are some specific features of the NIS and the RIS.

Firstly, Russian law still provides for the nationality requirement with regard to the owners and charterers who wish to register with the RIS. This requirement does not however prevent foreign entities or nationals to participate in respective Russian shipping companies. Norwegian law permits the foreign company to register with the NIS although with certain management conditions to be met (for example presence of the shipowner's representative in Norway).

Secondly, Russian regulation of the trading areas seems to be more lenient than Norwegian as permits in certain cases cabotage voyages for the ships registered with the RIS. On the other hand Russian law does not specify directly whether the ship employed at the foreign continental zone or the exclusive economic zone may be registered with the RIS.

Considering however that customs and tax privileges related to the RIS registration may be enjoyed upon presentation of certain documents confirming the calling at foreign ports, the absence of such confirmation may deprive the owner of the ship or the bareboat charterer of such privileges provided by the RIS registration.

Thirdly, Russian law does not provide for any specific or different regulation of employment with regard to ships registered with the RIS as against the RF SRS conditions. Foreign nationals may work at ships registered with both the RF SRS and the RIS but may not take positions of a master, a chief mate, a chief engineer and of a radio specialist (Article 56(1) of the RF MSC). Moreover foreign nationals should meet other general Russian requirements regarding working in Russia and also requirements set for foreigners at Russian ships<sup>36</sup>.

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<sup>36</sup> Specific employment requirements with regard to merchant and fishing ships are provided respectively by Decree of the RF Transport Ministry dated 25 January 2001 No. 14 and Decree of the State Fishing Committee dated 29 July 2002 No. 299

The NIS Act does not seem to restrict foreigners with respect to positions they may take at ships registered with the NIS. The NIS Act specifically provides for the collective wage agreement to be made with either the Norwegian or the foreign trade union (Section 6(2) of the NIS Act). Moreover, a collective wage agreement and/or the individual contract may provide for any employment dispute to be referred to the country where the employee resides<sup>37</sup>.

Unlike the RF SRS registration, the registration with the RIS entails certain tax and customs privileges for a shipowner or the bareboat charter. These include exemption from value added tax, *inter alia*, on importation of the ship to Russia, corporate profit tax, transport tax, corporate property tax and exemption from a customs duty.

Moreover, the RIS registration allows the ship to be classified by a foreign classification society approved by the Russian Government and to insure the property risks related to the ship registered with the RIS with a foreign insurance company<sup>38</sup>.

Another important advantage of the RIS registration against the RF SRS is that the registration process may take up to seven days<sup>39</sup> after applying for the registration whereas the RF SRS registration may take up to one month.

Lastly, Russian law does not prevent any ships which meet the requirements for registration with the RF SRS from being registered with the RIS. Norwegian law does not however permit the NIS registration with regard to fishing vessels, floating cranes, floating docks or dredgers<sup>40</sup>.

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<sup>37</sup> Falkanger p. 61

<sup>38</sup> The ships registered with any other Russian register of ships and risks related thereto should be insured by Russian insurance companies (Article 4(5) of the RF Law On Insurance)

<sup>39</sup> Provided that all requested documents are filed and comply with the requirements (item 29(3) of Ship registration rules)

<sup>40</sup> Falkanger p. 59

Accordingly both the RIS and NIS have certain advantages against the RF SRS and the NOR respectively. However, considering that the NIS and the RIS registrations are subject to certain restrictions (such as trading areas, payment of annual fees, impossibility to register certain ships), the decision whether it is worth to register with the RIS or the NIS depends on each particular case and may not be quite simple.

## **6 Chapter 5 Ship registration with the Russian Shipbuilding Register and the Norwegian Shipbuilding Register**

The following three sections of this chapter will discuss conditions for registration in the Russian Shipbuilding Register (the RSR), the Norwegian Shipbuilding Register (the NSR) and consider distinctions between them.

### **6.1 Registration with the RSR**

It should be noted first that the operation and need for the shipbuilding register much depends on shipbuilding industry in the respective country in general. Russian and previously Soviet shipbuilding industry has been mainly focused on construction of military ships and other government projects. The share of merchant projects in Russian shipbuilding industry has not much increased since the Soviet collapse and does not exceed 23 per cent<sup>41</sup>.

Russian shipping companies still tend to make orders at foreign yards and register their fleet under foreign flag<sup>42</sup>. The choice of foreign yards is usually explained by better technology, lower costs and ability to attract investments from foreign banks.

Moreover, considering that the registration with the RSR is not obligatory but is mainly purposed for the security of the creditor's rights, the activity of the RSR is much lower than of other registers of ships in Russia. For example as of 30 August 2007 the RSR with regard to St. Petersburg port included 13 entries whereas the RF SRS and the RIS included 488 and 107 entries respectively<sup>43</sup>.

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<sup>41</sup> Lantratov, p. 26

<sup>42</sup> Zaiko at: <http://www.raexpert.ru/editions/epr6/topic/>

<sup>43</sup> Vahlyanin at: [http://www.sea-law.ru/index.php?option=com\\_content&task=view&id=63&Itemid=76](http://www.sea-law.ru/index.php?option=com_content&task=view&id=63&Itemid=76)

The registration with the RSR as itself is regulated in detail in Part 6 of Ship registration rules whereas the RSR registration of mortgage is regulated as well in Chapter 22 (Articles 374-387) of the RF MSC.

Although Russia has not ratified Convention relating to registration of rights in respect of vessels under construction, 1967<sup>44</sup>, many of the above rules provide the same regulation as the Convention.

#### 6.1.1 Subject matter of the RSR registration

Under item 71 of Ship registration rules the rights to the ship under construction may be registered with the RSR if such a construction will form a seagoing ship after completion. As it follows thus (i) only rights to the construction (but not the construction itself) may be registered with the RSR, and (ii) only to the construction which will form a seagoing vessel.

Items 78(1) and 79(1) of Ship registration rules specify the rights and restrictions (encumbrances) which may be registered with the RSR. These are ownership, other proprietary rights and such encumbrances to these rights as mortgage and arrest.

With regard to the proprietary rights it should be noted that Russian law does not provide for the complete list of such proprietary rights but specifies some of them, including a servitude, the right of economic management and the right of operational management (Article 216(1) of the RF CC)<sup>45</sup>.

However, considering that the proprietary right to the ship under construction is usually registered with the RSR for the purpose of mortgage registration and that under Article 374 of the RF MSC only the owner or the holder of the right of the economic management may

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<sup>44</sup> According to information provided by the Norwegian Ministry of Trade and Industry as of 10 July 2008, the Convention relating to ships under construction is not yet in force

<sup>45</sup> The right of economic management and operational management of property may belong only to the state or municipal entities (Articles 294, 296 of the RF CC)

act as a mortgagor, it may be assumed that only the ownership and the right of economic management are usually registered with the RSR.

At the same time the right of economic management may be held only by the state or municipal unitary enterprises (Article 294 of the RF CC)<sup>46</sup>. As this thesis is more focused on registration issues with regard to private parties, the further discussion of the RSR registration will relate to the registration of ownership but not of the right of economic management.

Another issue which may arise at the RSR registration is what constitutes a seagoing vessel. It should be noted that the RF MSC and Ship registration rules do not explicitly define a seagoing vessel. However, Articles 3(1), 310 (1) of the RF MSC mention along with seagoing vessels such other vessels as inland waterways vessels and vessels for mixed (river-sea) navigation<sup>47</sup>.

Accordingly, under literal interpretation of item 71 of Ship registration rules it may be assumed that rights to ships under construction which will qualify as inland waterways vessels and vessels of mixed navigation may not be registered with the RSR. Such interpretation would then mean restriction of the rights with regard to owners of non seagoing ships under construction.

However, under Russian law the restriction of the rights may be provided only by the federal laws (Article 1(2) of the RF CC) but not by regulations issued by the executive body as are Ship registration rules. Accordingly, the registration of rights with the RSR with regard to the non seagoing ships under construction should not be refused due to the wording of item 71 of the Ship registration rules.

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<sup>46</sup> Commentary to the first part of the RF CC, p. 404

<sup>47</sup> Article 3 of the RF Inland Water Transport Code defines respectively the mentioned types of vessels as a vehicle performing navigation or other related activity in the Russian inland waterways and a vessel which may navigate in sea and inland waterways

Under Article 376(3) of the RF MSC and item 78(2) of Ship registration rules the ownership to the ship under construction may be registered with the RSR after the ship's keel is laid or equivalent constructional work has been performed.

In the latter case such constructional work should be supported by the expert's opinion. The RSR registration is performed at the port which is the most close to the shipbuilding yard where the ship is being built (Article 376(4) of the RF MSC, item 5 of Ship registration rules).

#### 6.1.2 Who may register with the RSR

It should first be noted that the RF MSC and Ship registration rules do not contain any direct restrictions with regard to persons or companies which may register its right of ownership to the ship under construction with the RSR.

At the same time under Article 376(2) of the RF MSC and item 86 of Ship registration rules the mortgage with regard to the ship which is built for the foreign buyer may not be registered with the RSR. Moreover, under item 114 of Ship registration rules, the ship under construction which ceased to comply with Article 15(1) of the RF MSC, i.e. with the nationality requirement, should be excluded from the RSR. Namely item 114 of the Ship registration rules does not permit foreign nationals and companies to be registered with the RSR as owners of the ship under construction.

Although the restriction of item 114 of the Ship registration rules is quite arguable due to the fact that restriction of any right may be provided only by federal laws<sup>48</sup> (Article 2(1) of the RF CC), Article 376(2) of the RF MSC directly prevents registration of mortgage with the RSR with regard to foreigners.

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<sup>48</sup> Whereas Ship registration rules were approved by the executive body (RF Transport Ministry) and thus are not the federal law.

Accordingly, even without taking into account the restriction of item 114 of Ship registration rules, the restriction of Article 376(2) of the RF MSC is enough by itself to dissuade a foreign buyer from taking the duties of the owner to the ship under construction.

Such restriction with regard to foreign nationals or entities is explained by the fact that the ship herself can not be registered in Russia by a foreign national or entity after her construction is completed<sup>49</sup>.

Such argument however does not seem to be persuasive as even Russian nationals and companies after buying a ship from Russian yards are not obliged to register the ship with the RF SRS or the RIS and in most cases register the vessel outside of Russia<sup>50</sup>.

Moreover, the restriction of civil rights is permitted in the event it is necessary for the defence of the constitutional order, morality, rights and interests of other people or safety of the state (Article 1(2) of the RF CC).

However, the registration of mortgage by the foreign party with the RSR does not seem to threaten any of the above stated values. Besides, the RSR registration by itself would not grant the ship under construction the further right to fly Russian flag after its completion and thus would not contradict to the nationality requirement of Article 15(1) of the RF MSC.

Moreover, between Russian registers of ships there is no succession in activity and thus the ship registration with another Russian ship register (safe for the Bareboat-charter register) is deemed to be valid only after the deletion of the ship from the previous ship register (Article 37(2) of the RF MSC)<sup>51</sup>. Accordingly the restriction stated in Article 376(2) of the RF MSC could not be explained either by the need for facilitation of the ship registration procedure.

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<sup>49</sup> Commentary to the RF MSC, p. 359.

<sup>50</sup> Vahlyanin, at: [http://www.sea-law.ru/index.php?option=com\\_content&task=view&id=63&Itemid=76](http://www.sea-law.ru/index.php?option=com_content&task=view&id=63&Itemid=76)

<sup>51</sup> The same rule of registration is reflected in Article 11(4) of Ship Registration Convention.



Due to the restriction in Article 376(2) of the RF MSC, a foreign buyer which made a shipbuilding contract with the Russian yard can not thus register its title to the ship under construction and establish a mortgage thereto. This restriction may also prevent a foreign buyer from borrowing any funds for the financing of the construction of the vessel<sup>52</sup>.

It should then be agreed with the opinion that the restriction in Article 376(2) of the RF MSC is unreasonable, contradicts to the principle of equality of rights provided by Article 19(2) of the RF Constitution and should be excluded from the RF MSC<sup>53</sup>.

However, the question about who may apply for the registration with the RSR depends as well on the respective shipbuilding contract and duties of the parties. Russian law does not provide any specific rules for the construction of ships but regulates a contract for work in general (Chapter 37(1) of the RF CC) and a construction contract (Chapter 37(3) of the RF CC).

It should be noted first that rules of Chapter 37(1) and 37(3) do not directly provide when the right of ownership to the ship under construction arises and which party of the contract, i.e. the builder or the buyer is initially entitled to the construction.

Under general rule of Article 704(1) of the RF CC (The performance of work by the means of the builder) the work is performed with the materials and by the efforts of the builder unless otherwise is provided by the contract. Moreover, under Articles 705(1) and 741(1) of the RF CC the risk of loss and the risk of accidental damage to the subject matter of the contract before its acceptance by the buyer are borne by the builder.

Considering as well that the risk of loss and the risk of the accidental damage are usually borne by the owner of the property (Article 211 of the RF CC), it may be concluded that

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<sup>52</sup> Due to general practice if shipbuilding is financed by the buyer then about 80 per cent of the contract's price is paid with the borrowed funds. Gavriluk, at: <http://www.kommersant.ru/doc.aspx?DocsID=724422>

<sup>53</sup> Shashorin, p. 49

under general rules of Russian law the ship under construction usually belongs to the builder.

Given however that the ship is not usually built only by the means of the builder, the parties may assign ownership to the construction at their own decision. Accordingly, as a matter of Russian law the right of ownership to the ship under construction may be registered with the RSR either by the builder or by the buyer depending on the respective shipbuilding contract.

### 6.1.3 Registration procedure and documents

The RF MSC and Ship registration rules do not provide any specific provisions with regard to registration procedure with the RSR. Under general rule the registration is performed within one month after the application was filed with the registration authority (item 29 of Ship registration rules).

The registration of the right of ownership is deemed to be completed as of the date the respective entry is made into the RSR (item 4 of Ship registration rules). The RSR registration of mortgage is also performed within one month after the application was filed, but the registration entry in the RSR is dated the same date as the application was received by the registration authority (Article 377(4) of the RF MSC).

The latter rule provides legal protection of mortgagees and is quite common for other shipbuilding jurisdictions<sup>54</sup>.

The registration of the right of ownership with the RSR is confirmed by the certificate of the state registration of the right with regard to the ship under construction (item 118 and Annex 7 of Ship registration rules). The registration of mortgage with the RSR is confirmed by the certificate of mortgage registration with regard to ship under construction (Article 377(4) of the RF CC).

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<sup>54</sup> Curtis, p.35

The particular documents required for the registration of the right of ownership with the RSR are provided in items 82 and 83 of Ship registration rules and include an application signed by the owner or its representative, a shipbuilding contract, confirmation of powers of the parties which signed the shipbuilding contract, the written confirmation of the shipbuilding yard to the effect that the keel was laid or the expert's opinion that the equivalent constructional work was performed, powers of attorney with regard to representatives of the owner of the ship under construction.

Moreover, under item 78 of Ship registration rules the RSR should contain information on, *inter alia*, the owner of the ship under construction. Accordingly, the RSR should be provided as well with identity documents of the owner (for example the foundation documents and the documents confirming the state registration of the company).

Although the registration of mortgage with the RSR is based on the previous registration of the right of ownership with regard to the ship under construction (Articles 376(3) and 377(1) of the RF MSC), it forms a separate registration operation and thus requires separate documents.

Under Article 377 of the RF MSC the mortgage registration is performed on the basis of application made by the owner of the ship under construction and the mortgage agreement together with the respective shipbuilding agreement. Moreover, considering that the RSR should as well contain information on, *inter alia*, the mortgagor and the mortgagee (Article 377(2) of the RF MSC) the applicant should as well provide foundation and registration documents with regard to the mortgagor and the mortgagee, documents confirming the powers of the parties which signed the mortgage agreement.

## 6.2 Registration with the NSR

The registration with the NSR is specifically regulated by Chapter IV of the NMC, Sections 9, 10 of the NOR regulations. Considering however that the NSR is a part of the NOR (first sentence of Section 31 of the NMC), certain general rules of the NMC and the NOR

regulations with regard to, *inter alia*, challenge of ship registration, particulars included into the register, registration procedure are applied as well to the NSR.

It should be also noted that Norway signed Convention relating to ships under construction in 1972<sup>55</sup> and the respective rules of the NMC are based on this Convention<sup>56</sup>.

#### 6.2.1 Subject matter of the NSR registration

Under Section 31 of the NMC ships under construction and contracts for the construction of ships in Norway may be registered with the NSR. The NMC does not specify what forms a ship under construction and does not specify any obligatory constructional work to be carried out before the ship under construction may be registered.

At the same time under Section 31(2) of the NMC the entry in the NSR can be made only if it is shown that the ship will have a length overall of 10 meters or more. Accordingly, it may be assumed that the registration with the NSR is permitted as soon as the shipbuilding contract is executed and the respective plans and drawings show that the overall length of the future ship will be 10 meters or more.

Moreover, the last sentence of Section 31 of the NMC states that the builder may also register with the NSR a declaration about its decision to build a ship on its own account. The registration of the declaration is deemed to be equal to the registration of the contract and corresponds as well to Article 4(1) of Convention relating to ships under construction. Presumably in the latter case the registration with the NSR may take place when there are not yet any ready plans and drawings confirming the overall length of the vessel.

#### 6.2.2 Who may register with the NSR

As it follows under second sentence of Section 31 of the NMC the registration of the shipbuilding contract and the ship with the NSR may be performed at the application of the buyer or the builder respectively. The decision as to whether the builder or the buyer may

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<sup>55</sup> Provided at: <http://www.diplomatie.be/fr/word/treaties/i15.doc>

<sup>56</sup> Falkanger, p. 69

register with the NSR obviously depends on which party intends to borrow funds to finance the shipbuilding and thus needs to provide security.

It should be noted that under Norwegian law the title to the ship under construction usually belongs to the builder (Articles VIII(4) and XI(1) of the Shipbuilding contract). Accordingly, it seems quite normal for a builder to register a ship under construction and then, if required, to register as well the mortgage with regard to the ship under construction.

However, if it is a buyer who should find and secure the financing for the shipbuilding, then obviously the buyer may not register the mortgage with regard to the ship without the prior consent of the owner of the ship under construction, i.e. the builder. In the latter case the buyer is permitted to register the shipbuilding contract and the ship under construction with the builder as the title holder (Article XI(1) fourth paragraph of the Shipbuilding contract).

There is no nationality requirement with regard to the NSR registration (Section 9(2) of the NOR regulations).

### 6.2.3 Registration procedure and documents

As it was mentioned above in 6.2 the registration procedure and certain basic information (for example information about the expected length of the ship, her breadth and depth) are the same as provided for the NOR registration.

The list of documents required for the registration with the NSR obviously depends on which party under the shipbuilding contract holds a title to the ship under construction and which party applies for the registration.

In the event the application is filed by the builder who holds the title to the ship under construction then it might be assumed that the NSR registration will require the application made on the form of the Norwegian Ministry of Trade and Industry, a certificate issued by the Register of Moveable property stating of any other records about the ship under

construction (Section 9(1) of the NOR regulations), the shipbuilding contract (due to the particulars included in to the NSR under Section 13 of the NMC) or the builder's declaration about the building of a ship (last sentence of Section 31(1) of the NMC).

In the event the ship under construction is owned by the builder, but the buyer wishes to register the shipbuilding contract, it may be assumed that the NSR will request the same documents as described immediately above. The registration of mortgage by the buyer might require the builder's consent.

### 6.3 Summary with regard to differences

Although the RSR and the NSR are quite different in its approach to registration, their principal purpose is the same, i.e. to provide security with regard to commitments between the builder or the buyer as a debtor and any financing party as the creditor and protect the rights of such creditors. Based on the above discussion with regard to the RSR and the NSR, the following distinctions may be noted.

Firstly, it should be noted that the status of the ship under construction under Russian law is not clearly defined. Article 130(1) of the RF CC does not name a ship under construction as one of the real estate objects and thus it should be deemed as moveable property (Article 130(2) of the RF CC).

At the same time, Ship registration rules (item 118) provide for the issuance of certificate of the state registration of the rights with regard to the ship under construction. However, the state registration of the rights may be carried out only under special rules<sup>57</sup> and by the special Registrar different from the harbour master. Accordingly, the registration of the ownership to the ship under construction with the RSR may not be regarded as the state registration and respective amendments should be made to Ship registration rules.

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<sup>57</sup> Provided by Federal law On the state registration of the rights to real estate objects and the deals thereto

Norwegian rules seem to be more clear about the system of registration with regard to ships under construction. Under Section 9(1) of the NOR regulations it follows that a ship under construction is moveable property and may be registered with the Register of Moveable Property. However, the further registration with the RSR should include any previous records with the Register of Moveable Property and presumably be carried out after the deletion of the ship under construction from the Register of Moveable property.

Secondly, as it was mentioned before, the RSR is a separate ship register. Accordingly, any entries made in the RSR can not be transferred to the RF SRS or the RIS but may be only deleted. The inclusion of any previous entries with the RF SRS or the RIS requires thus deletion from the RSR and new registration with the respective register.

Under Section 10 of the NOR regulations, the NSR forms part of the NOR and the Registrar thus may terminate the registration with the NSR and transfer any registered rights to the NOR. The latter approach seems to be more advisable as protects the rights of interested parties and facilitates the registration procedure with the NOR for the owner.

Thirdly, it should be noted that Russian rules regulating the initial RF SRS or the RIS registration do not mention any evidence or confirmation to the effect that the ship was not registered before with any shipbuilding register, including the RSR. Although Article 37(1) of the RF MSC provides that the ship may be registered only with one of the ship registers, this rule has not been clearly reflected in the Ship registration rules with regard to RSR.

Ship registration rules do not provide for any deletion certificate issued by the RSR to be presented upon registration with the RF SRS or the RIS and thus do not exclude the risk that any prior encumbrances with regard to the ship and encumbrances registered with the RSR may be not included into the RF SRS or the RIS.

The NIS regulations provide for the deletion certificate to be presented with regard to ships transferred from the NSR (Section 8(7)).

## **7 Chapter 6 Ship registration with the Bareboat Charter Register**

Firstly, it should be noted that the establishment of system of bareboat registration (or also known as dual registration or double registration<sup>58</sup>) is getting more and more popular in different countries. Presently, the bareboat-charter registers operate in Germany, Italy, France, Spain, Mexico<sup>59</sup> and many other countries.

The popularity of bareboat-charter registers is often explained by certain flag preferences, tax breaks or lower crewing costs<sup>60</sup>.

Although there are many specific features of bareboat registers in different countries the order of registration operations is mainly the same and implicates that the ship's owner temporally suspends the registration with its home flag state whereas the bareboat charterer registers the ship for the period of the bareboat charter under the flag of its home state. The primary registration revives upon the expiry or termination of the bareboat charter.<sup>61</sup>

Considering that Norwegian law does not provide for the bareboat register of ships, the further discussion will be focused on Russian system of bareboat register of ships.

### **7.1 Registration with the Russian Bareboat-charter Register**

The Russian Bareboat-charter Register (the RBCR) started to operate only after the adoption of the RF MSC, i.e. in 1999. The previous USSR Merchant shipping code of 1968 did not provide for any bareboat-charter registration.

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<sup>58</sup> Falkanger, p. 52

<sup>59</sup> Commentary to the RF MSC, p. 24

<sup>60</sup> Davis, p.142

<sup>61</sup> Davis, p.141-142



The RBCR forms a separate register of ships (Article 33(1) of the RF MSC) and is run by the harbour master of the respective port.

The registration with the RBCR is regulated by Chapter 2 (Articles 15-19), Chapter 3 of the RF MSC and Ship registration rules (Section IV).

Considering that certain issues of bareboat-charter registration are regulated by International Convention on Maritime Liens and Mortgages, 1993<sup>62</sup> and Ship Registration Convention, the RF MSC and Ship registration rules are much based on these conventions.

## 7.2 Conditions for the RBCR registration

It should be noted first that the registration of ships with the RBCR is preceded by the same decision on provisional granting to the ship the right to fly the Russian flag as described in 5.1.2 above. Accordingly, the applicant for the RBCR should meet with the same conditions as provided for the RIS registration with regard to the bareboat charterer.

These conditions namely include *(i)* the nationality requirement with regard to the bareboat charterer who wishes to register the ship with the RBCR, *(ii)* the primary registration of the bareboat chartered vessel with the ship register of another state, *(iii)* the consent of the ship's owner and the holders of any registered rights with regard to the change of the flag of the ship, *(iv)* the absence of restrictions in the law of the state where the ship is primary registered for the ship to fly the foreign flag, *(v)* suspension of the right to fly the flag of the state of primary registration as of the date the ship is granted the right to fly the Russian flag.

Considering that requirements under *(i)*, *(ii)* and *(iii)* were already discussed above and are quite straight, it seems advisable to discuss requirements under *(iv)* and *(v)*.

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<sup>62</sup> Under Federal Law dated 17 December 1998 No. 184-FZ Russia acceded to the Convention

The existence of the bareboat registration is not common and depends on the national rules of the state (Article 11(1) of Ship Registration Convention). Accordingly, the national law may either permit the ship primarily registered under its flag to fly a foreign flag (as Russian law under Article 19(1) of the RF MSC) or not permit (as Norwegian law). Usually the states which national law provides for a bareboat charter regulation, permit as well the change of the flag<sup>63</sup>.

In any case it seems advisable for a party that wishes to charter a foreign vessel on a bareboat charter and register with the RBCR firstly to find out whether the national law of such foreign state permits the change of flag.

The suspension of the right to fly the flag of primary registration is different from deletion of the ship from the primary register and is usually effective for a certain time<sup>64</sup>. The same requirement on suspension is provided in Article 11(5) of Ship Registration Convention.

### 7.3 Registration procedure and documents

Due to the same regulation provided for both the RIS registration (in the name of the bareboat charterer) and the RBCR registration regarding registration procedure and documents, the below discussion will concentrate only on specific features of registration with the RBCR.

The ship registration with the RBCR is temporal and is limited to the term of the decision on provisional granting to the ship the right to fly the Russian flag or the term of the bareboat-charter. However, for the purpose of the RBCR registration, the term of the bareboat-charter may not be less than one year as the mentioned decision is issued for two years (Article 15(3) of the RF MSC). Accordingly, the term of the RBCR registration may not be less than one year but not more than two years.

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<sup>63</sup> Commentary to the RF MSC, p. 27

<sup>64</sup> Commentary to the RF MSC, p. 25

The registration with the RBCR is confirmed with the certificate for the right to fly the state flag of the Russian Federation (item 118 of Ship registration rules).

One of the main concerns arising with regard to bareboat-charter registration is what happens with the mortgages or other encumbrances registered with the primary ship register<sup>65</sup>.

Under Russian law the mortgages and other registered rights with regard to the ship registered with the RBCR are regulated by the law of the state where the ship is primarily registered (Article 40(2) of the RF MSC). However, the registered mortgagee or the holder of another registered right may apply to the RBCR with the request to include its name, other details about the registered right into the RBCR (Article 40(2) of the RF MSC).

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<sup>65</sup> Flags of convenience-challenges for financing banks, p. 22

## **8 Conclusion**

As it follows from the above discussion with regard to Norway and Russia, both systems are very well developed and provided with detailed regulation.

However, the comparison of rules makes certain drawbacks in regulation more evident and also arises questions as to the necessity of certain restrictions. Considering however that some regulations are quite new and have already been much criticized by interested parties (for example with regard to the RIS) it might be assumed that respective amendments should be made soon.

At the same time there seem to be a real need for international instruments that would unify registration rules and practice. Although the mentioned Ship Registration Convention and Convention relating to ships under construction are much applied as a source of general practice, neither of the Conventions is in force and is not binding.

The findings provided by this thesis were mainly based on analysis of national rules, literature, information provided at the relevant web sites and explanations orally provided by officials engaged in ship registration (for example explanations provided by harbour masters of Russian seaports in St. Petersburg and Kaliningrad).

Considering that most literature with regard to Norwegian system of registration was available in Norwegian, this thesis probably failed to provide sufficient analysis with regard to Norwegian rules.

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CLC International Convention on Civil Liability for Oil Pollution Damage, 1969

Convention relating to the Athens Convention relating to the Carriage of Passengers and their luggage by Sea, 1974  
At: <http://www.admiraltylawguide.com/conven/passengers1974.html>

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Load Lines

International Convention on Maritime Liens and Mortgages, 1993  
Maritime Liens and Mortgages  
At:

<http://www.admiraltylawguide.com/conven/liens1993.html>

International Safety Management Code, 2002 approved by  
the International Maritime Organization  
Management Code

MARPOL 73/78  
International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto

United Nations Convention on Conditions for Registration of Ships, 1986  
Ship Registration Convention  
At:  
<http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXII/treaty16.a>

International Convention for the Safety of Life at Sea, 1974  
SOLAS

International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978  
STCW

United Nations Convention on the recognition and enforcement of foreign arbitral awards, 1958  
UN Convention on the recognition and enforcement

of foreign arbitral awards

At:

[http://www.uncitral.org/uncitral/en/uncitral\\_texts/arbitration/NYConvention.html](http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention.html)

UNCLOS

United Nations Convention on the Law of the Sea, 1982

At:

[http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf)

**Laws and Acts of the  
Russian Federation**

the RF Constitution

Constitution of the Russian Federation dated  
12 December 1993

At:

<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=2875;div=LAW;mb=LAW;opt=1;ts=556EFD6DF6A0CA4FBC585BB7CE3DE0EB>

the RF MSC

Merchant Shipping Code of the Russian Federation  
No. 81-FZ dated 30 April 1999

At:

<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=73391;div=LAW;mb=LAW;opt=1;ts=09F717D82AEDF698590E23BA3B28AB51>

the RF CC

Civil Code of the Russian Federation (Four Parts adopted  
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dated 30 November 1994 No. 51-FZ, 26 January 1996 No.  
14-FZ, 26 November 2001 No. 146-FZ and 18 December

2006 No. 230-FZ respectively)

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<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=76935;div=LAW;mb=LAW;opt=1;ts=C4E62D48FA4D76017C52AF9BF8C835CB>

the RF APC

Arbitrazh Procedure Code of the Russian Federation dated 24 July 2002 No. 95-FZ

At:

<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=76697>

the RIS law

Federal Law dated 20 December 2005 No. 168-FZ “On introduction of amendments in to certain laws of the Russian Federation due to creation of the Russian International Ship Register”

At:

<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=57234;fld=134;dst=100019;div=LAW>

the Seaport Law

Federal Law “On the sea ports in the Russian Federation and introduction of amendments to certain legislative acts of the Russian Federation” No. 261-FZ dated 8 November 2007

At:

<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=72390;fld=134;dst=100387;div=LAW>

the Law on foreign investments into the companies which have strategic importance for the

Federal Law dated 29 April 2008 No. 57-FZ “On the procedure of foreign investments into the companies which have strategic importance for the security and safety of the state”

security and safety of the state	At: <a href="http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=76660;div=LAW;mb=LAW;opt=1;ts=DFC9E71DDB66BC3EBCDBFC5B07A4062E">http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=76660;div=LAW;mb=LAW;opt=1;ts=DFC9E71DDB66BC3EBCDBFC5B07A4062E</a>
the RF Law On Insurance	Law of the Russian Federation dated 27 November 1992 No. 4015-1 “On arrangement of insurance in the Russian Federation” At: <a href="http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=72882;div=LAW;mb=LAW;opt=1;ts=66AAD6BE349A17B975F7BA499DFEAF10">http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=72882;div=LAW;mb=LAW;opt=1;ts=66AAD6BE349A17B975F7BA499DFEAF10</a>
Federal law On the state registration of the rights to real estate objects and the deals thereto	Federal law dated 21 July 1997 No. 122-FZ “On the state registration of the rights to real estate objects and the deals thereto” At: <a href="http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=78045">http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=78045</a>
the RF Air Code	Air Code of the Russian Federation dated 19 March 1997 No. 60-FZ At: <a href="http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=78273;div=LAW">http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=78273;div=LAW</a>
the RF Railway Transport bylaws	Bylaws of Railway Transport of the Russian Federation approved on 10 January 2003 No. 18-FZ At: <a href="http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=">http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=</a>

[LAW;n=72455;div=LAW;mb=LAW;opt=1;ts=FB281EC631B6E88A8F567328E09B00AD](http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=72455;div=LAW;mb=LAW;opt=1;ts=FB281EC631B6E88A8F567328E09B00AD)

the RF Tax Code

Tax Code of the Russian Federation (Second Part) dated 5 August 2000 No. 117-FZ

At:

<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=73141;div=LAW>

the RF Inland Water  
Transport Code

Code of Inland Water Transport of the Russian Federation dated 7 March 2001 No. 24-FZ

At:

<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=78271;div=LAW>

Federal Law dated 17  
December 1998 No. 184-FZ

Federal Law dated 17 December 1998 No. 184-FZ “On accession of the Russian Federation to International Convention on Maritime Liens and Mortgages 1993”

At:

<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=21340;div=LAW;mb=LAW;opt=1;ts=65A76DAEA14EA05756B9C1708B1CA39D>

USSR Merchant shipping  
code

Merchant shipping code of the Union of the Soviet Socialist Republics dated 17 September 1968 (not valid)

At:

<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=10335;div=LAW;mb=LAW;opt=1;ts=120AFDD142B252664832D6C1A0ABB6FF>

USSR Decree on Ratification	<p>Decree issued by the USSR Supreme Council on 10.08.1960 “On ratification of Convention on the Recognition and Enforcement of foreign arbitral awards”</p> <p>At:</p> <p><a href="http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=INT;n=3702;div=LAW;mb=LAW;opt=1;ts=BDC4B8B2DAEE7B859F052C02FDFB3103">http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=INT;n=3702;div=LAW;mb=LAW;opt=1;ts=BDC4B8B2DAEE7B859F052C02FDFB3103</a></p>
Ship registration rules	<p>Rules on registration of ships and rights thereto in seaports (approved by the Order of the Transport Ministry of the Russian Federation No. 87 dated 21 July 2006)</p> <p>At:</p> <p><a href="http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=72790;div=LAW;mb=LAW;opt=1;ts=148C7DFE34BD1749B0C4FD9E6C195940">http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=72790;div=LAW;mb=LAW;opt=1;ts=148C7DFE34BD1749B0C4FD9E6C195940</a></p>
Fishing ships registration rules	<p>Rules on registration of fishing vessels and rights thereto in sea fishing ports (approved the Order of the State Fishing Committee of the Russian Federation No. 30 dated 31 January 2001)</p> <p>At:</p> <p><a href="http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=42945;div=LAW;mb=LAW;opt=1;ts=D25A5CFB84C9BEF562E7E9BCDE567005">http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=42945;div=LAW;mb=LAW;opt=1;ts=D25A5CFB84C9BEF562E7E9BCDE567005</a></p>
the Decree of the RF President on Issues of system and structure of the federal executive bodies	<p>Decree of the RF President dated 12 May 2008 No. 724 “Issues of system and structure of the federal executive bodies”</p> <p><a href="http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=77381;div=LAW;mb=LAW;opt=1;ts=4343B2D0263807F1DE5EF68F9C2EE65A">http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=77381;div=LAW;mb=LAW;opt=1;ts=4343B2D0263807F1DE5EF68F9C2EE65A</a></p>

Harbour master regulations	<p>Regulations on “Harbor master of a sea port” (approved by the Decree of the Transport Ministry of the RF dated 29 December 2006 No. 8708)</p> <p>At:</p> <p><a href="http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=65166;fld=134;dst=100010;div=LAW">http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=65166;fld=134;dst=100010;div=LAW</a></p>
Regulations on the RF Transport surveillance service	<p>Regulations on the Transport surveillance service of the Russian Federation (approved by the Russian Government Decree dated 30 July 2004 No. 398)</p> <p>At:</p> <p><a href="http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=77896;div=LAW;mb=LAW;opt=1;ts=E1F8ED809A2A03B198F955051FE71E9A">http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=77896;div=LAW;mb=LAW;opt=1;ts=E1F8ED809A2A03B198F955051FE71E9A</a></p>
Regulations on the RF Federal Fishing Agency	<p>Regulations on the Federal Fishing Agency (approved by the Russian Government Decree dated 11 June 2008 No. 444)</p> <p>At:</p> <p><a href="http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=77647;fld=134;dst=100019;div=LAW">http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=77647;fld=134;dst=100019;div=LAW</a></p>
Decree on the RIS seaports	<p>Decree of the Government of the Russian Federation dated 25 April 2006 No. 583-p “On seaports where harbour masters register ships with the Russian International Ship Register”</p> <p>At:</p> <p><a href="http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=EXP;n=365283;fld=134;dst=100006;div=LAW">http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=EXP;n=365283;fld=134;dst=100006;div=LAW</a></p>
Decree of the RF Transport Ministry dated 25 January 2001 No. 14	<p>Decree of the Transport Ministry of the Russian Federation dated 25 January 2001 No. 14 “On conditions under which foreign nationals and apatrides may be employed to ships</p>

flying the state flag of the Russian Federation save for fishing vessels”

At:

<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=30639;div=LAW;mb=LAW;opt=1;ts=2BBF6E0C3220A075B66B3FAFBB4AFCE6>

Decree of the State Fishing Committee dated 29 July 2002 No. 299

Decree of the State Fishing Committee dated 29 July 2002 No. 299 “On conditions under which foreign nationals and apatrides may be employed to fishing vessels flying the state flag of the Russian Federation”

At:

<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=38433;div=LAW;mb=LAW;opt=1;ts=2BBF6E0C3220A075B66B3FAFBB4AFCE6>

Decree of the RF Transport surveillance service on organization of registration

Decree of the RF Transport surveillance service “On organization of registration of sea going ships, river ships and keeping of respective registers” dated 20 April 2005 No. AH-77-p(φc)

At:

<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=EXP;n=354120;div=LAW;mb=LAW;opt=1;ts=FDED1EF1EF6F88394F6EAEF0DB051E88>

Decree of the Government of the Russian Federation on improvement of state executive system of fishing ports

Decree of the Government of the Russian Federation “On improvement of state executive system of fishing ports” No. 773 dated 16 December 2006

At:

<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=72355>

Decree of the RF Government

Decree of the Government of the Russian Federation “On



on carriage and towage in the carriage and towage in cabotage performed by the ships  
cabotage by ships flying the flag of a foreign state as well as by the ships  
flag of a foreign state or registered with the RIS” dated 24 May 2000 No. 404  
registered with the RIS

At:

<http://base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=73604;fld=134;dst=4294967295;div=LAW>

the Letter of the RF Transport Ministry Letter issued by the Transport Ministry of the Russian Federation on 10 July 2007 No. CA-18/5089 “On application of Russian laws and problems arising at bareboat chartering [...]”

At:

[http://www.rostransnadzor.ru/sea/news\\_detail.php?ID=25](http://www.rostransnadzor.ru/sea/news_detail.php?ID=25)

### **Norwegian Laws and Acts**

the NMC Norwegian Maritime Code dated  
24 June 1994 No. 39

At: <http://folk.uio.no/erikro/WWW/NMC.pdf>

the NOR regulations Regulations relating to the Registration of Ships in the Norwegian Ordinary Ship Register (FOR 1992-07-30 No.593)

At: <http://www.nis-nor.no/Dokumenter/NOR%20Regulations.aspx>

the NIS regulations Regulations relating to the Registration of Ships in the Norwegian International Ship Register dated 30 July 1992 No. 592

At:

<http://www.nis->

[nor.no/Dokumenter/NIS%20Regulations.aspx](http://nor.no/Dokumenter/NIS%20Regulations.aspx)

the NIS Act                      Act of 12 June 1987 No. 48 relating to a Norwegian  
International Ship Register  
At: [http://www.nis-nor.no/upload/lov-19870612-048-  
eng\\_001.pdf](http://www.nis-nor.no/upload/lov-19870612-048-eng_001.pdf)

the       Fishing       vessels    Act dated 5 December 1917 No. 1 Relating to Registration  
registration Act                      and Marking of Fishing-Vessels  
At: [http://www.ub.uio.no/ujur/ulovdata/lov-19171205-001-  
eng.pdf](http://www.ub.uio.no/ujur/ulovdata/lov-19171205-001-eng.pdf)

### **Secondary Literature**

Collection       of       Shipping    Documents used in Shipping. Scandinavian Institute of  
documents                                      Maritime Law, University of Oslo 2003

## **Annex 1 Abbreviations**

IMO	International Maritime Organization
the NIS	Norwegian International Ship Register
the NIS Act	Act of 12 June 1987 No. 48 relating to a Norwegian International Ship Register
the NIS regulations	Regulations relating to the Registration of Ships in the Norwegian International Ship Register dated 30 July 1992 No. 592
the NMC	Norwegian Maritime Code dated 24 June 1994 No. 39
the NMD	Norwegian Maritime Directorate
the NOR	Norwegian Ordinary Ship Register
the NOR regulations	Regulations relating to the Registration of Ships in the Norwegian Ordinary Ship Register (FOR 1992-07-30 No.593)
the NSR	Norwegian Shipbuilding Register
the RBCR	Russian bareboat-charter register
the RIS	Russian International Ship Register
the RF	The Russian Federation
the RF CC	Civil Code of the Russian Federation (Four Parts adopted by State Duma of the Russian Federation as Federal Laws dated 30 November 1994 No. 51-FZ, 26 January 1996 No. 14-FZ, 26 November 2001 No. 146-FZ and 18 December 2006 No. 230-FZ respectively)
the RF MSC	Merchant Shipping Code of the Russian Federation No. 81-FZ dated 30 April 1999
the RF SRS	State Register of ships in the Russian Federation

the RSR	Russian Shipbuilding Register
Saleform 1993	Standard form contract drawn up by the Norwegian Shipbroker's Association and adopted by the Baltic and International Maritime Council
the Ship registration rules	Rules on registration of ships and rights thereto in sea commercial ports (approved by the Order of the Transport Ministry of the Russian Federation No. 87 dated 21 July 2006)
the Shipbuilding contract	Standard form of shipbuilding contract 2000 approved by the Norwegian Shipowners Association, Norwegian Shipbuilders Sale & Marketing Organization and Norwegian Shipbuilders Association
UNCLOS	United Nations Convention on the Law of the Sea, 1982

## **Annex 2 the RF MSC (Extract)**

The translation of this and two following Extracts of Russian Laws was made by the writer of this thesis.

### **Статья 7. Судно**

1. Под судном в настоящем Кодексе понимается самоходное или несамоходное плавучее сооружение, используемое в целях торгового мореплавания.

2. Под судами рыбопромыслового флота в настоящем Кодексе понимаются обслуживающие рыбопромысловый комплекс суда, используемые для рыболовства, а также приемотранспортные, вспомогательные суда и суда специального назначения. (в ред. Федерального закона от 06.12.2007 N 333-ФЗ)

### **Статья 15. Право плавания под Государственным флагом Российской Федерации**

1. Право плавания под Государственным флагом Российской Федерации предоставляется судам, находящимся в собственности:  
граждан Российской Федерации;  
юридических лиц в соответствии с законодательством Российской Федерации;  
Российской Федерации, субъектов Российской Федерации;  
муниципальных образований.

2. На основании решения одного из федеральных органов исполнительной

### **Article 7. Vessel**

1. Under a vessel in this Code shall be understood any self-propelled or non-self-propelled floating construction used for the purpose of merchant shipping.

2. Under vessels of fish fleet in this Code shall be understood vessels in service for fishery complex, those used for fishing, as well as transport vessels, auxiliary vessels and vessels for special purposes (as amended by Federal Law dated 06.12.2007 No. 333-FZ)

### **Article 15. Right to fly the State Flag of the Russian Federation**

1. The right to fly the State flag of the Russian Federation shall be granted to vessels owned by:  
citizens of the Russian Federation;  
legal entities in accordance with the laws of the Russian Federation;  
the Russian Federation,  
constituents of the Russian Federation;  
municipal units.

2. On the basis of a decision by one of the federal executive authorities mentioned in

власти, указанных в пункте 3 настоящей статьи, право плавания под Государственным флагом Российской Федерации может быть временно предоставлено зарегистрированному в реестре судов иностранного государства судну, предоставленному в пользование и во владение российскому фрахтователю по договору фрахтования судна без экипажа (бербоут-чартеру) в случае, если:

фрахтователь судна по бербоут-чартеру отвечает требованиям, предъявляемым к собственнику судна в соответствии с пунктом 1 настоящей статьи; собственник судна дал в письменной форме согласие на перевод судна под Государственный флаг Российской Федерации; залогодержатель ипотеки судна или обременения судна того же характера, установленных и зарегистрированных в соответствии с законодательством государства собственника судна, дал в письменной форме согласие на перевод судна под Государственный флаг Российской Федерации; законодательство государства собственника судна не запрещает предоставление судну права плавания под флагом иностранного государства; право плавания под флагом иностранного государства приостановлено или будет приостановлено в момент предоставления судну права плавания под Государственным флагом Российской Федерации.

3. Решение о предоставлении права плавания под Государственным флагом Российской Федерации судну, зарегистрированному в реестре судов иностранного государства, за исключением рыбопромыслового судна,

item 3 of this Article, the right to fly the State Flag of the Russian Federation may be granted temporarily to a vessel registered in a Register of Ships of a foreign state which has passed into the use and possession of a Russian charterer under a charter of vessel without crew (a bareboat charter), if: the bareboat charterer of the vessel complies with the requirements to an owner of the vessel in item 1 of this Article; the owner of the vessel has given his written consent to the transfer of the vessel under the State Flag of the Russian Federation; the holder of a mortgage to the vessel or of encumbrance of the same nature effected and registered in conformity with the laws of the state of the owner of the vessel, has given his written consent to the transfer of the vessel under the State Flag of the Russian Federation; the laws of the state of the owner of the vessel does not forbid granting to the vessel the right to fly the State Flag of the Russian Federation; the right to fly the foreign flag has been suspended or will be suspended at the time of granting to the vessel of the right to fly the State Flag of the Russian Federation.

3. A decision on the granting of the right to fly the State Flag of the Russian Federation to a vessel registered in a Register of Ships of a foreign state, with the exception of fishing vessels, shall be taken by the federal executive authority on transport and to a

принимается федеральным органом исполнительной власти в области транспорта, рыбопромысловому судну - федеральным органом исполнительной власти в области рыболовства с соблюдением требований, предусмотренных пунктом 2 настоящей статьи. Право плавания под Государственным флагом Российской Федерации может быть предоставлено судну на срок, не превышающий двух лет, с правом последующего продления его через каждые два года, но не свыше срока действия бербоут-чартера. Для целей смены флага срок действия бербоут-чартера не может быть менее чем один год. При предоставлении судну права плавания под Государственным флагом Российской Федерации федеральные органы исполнительной власти, указанные в абзаце первом настоящего пункта, определяют, каким должно быть название судна. Подтверждение прекращения действия решения о предоставлении судну права плавания под Государственным флагом Российской Федерации принимается в том же порядке, что и само решение.

#### **Статья 16. Возникновение права плавания под Государственным флагом Российской Федерации**

1. Судно приобретает право плавания под Государственным флагом Российской Федерации с момента регистрации его в одном из реестров судов Российской Федерации, указанных в пункте 1 статьи 33 настоящего Кодекса.
2. Судно, приобретенное за пределами Российской Федерации, пользуется правом плавания под Государственным флагом Российской Федерации с момента выдачи консульским учреждением

fishing vessel – by the federal executive authority in fishery provided that the requirements under item 2 of this Article are complied with.

The right to fly the State Flag of the Russian Federation may be granted to a vessel for a period of up to two years, with the right to subsequently extend it every two years, but not longer than the term of the bareboat charter. For the purpose of changing the flag, the period of the bareboat charter may not be less than one year. When granting to a vessel the right to fly the State Flag of the Russian Federation, the federal executive authorities mentioned in sub item one of this item shall determine what the name of the vessel shall be. Confirmation of the termination of the decision to grant a vessel the right to fly the State Flag of the Russian Federation shall be made in the same order as the one of the decision.

#### **Article 16. Arising of the right to fly the State Flag of the Russian Federation**

1. A vessel shall acquire the right to fly the State Flag of the Russian Federation from the time it is entered in one of the registers of ships of the Russian Federation specified in item 1 of Article 33 of this Code.
2. A vessel acquired outside the Russian Federation shall enjoy the right to fly the State Flag of the Russian Federation from the time a temporary certificate is issued by a consulate of the Russian Federation

Российской Федерации временного свидетельства, удостоверяющего такое право и действительного до регистрации судна в Государственном судовом реестре, Российском международном реестре судов или судовой книге, но не более чем шесть месяцев.

(в ред. Федерального закона от 20.12.2005 N 168-ФЗ)

confirming such right, which stays in effect until the vessel is entered in the State Register of Ships, the Russian International Register of Ships or in a ship book, but not longer than six months (as amended by Federal Law dated 20.12.2005 No. 168-FZ)

### **Статья 33. Реестры судов Российской Федерации**

1. Судно подлежит регистрации в одном из реестров судов Российской Федерации (далее - реестры судов):  
Государственном судовом реестре;  
судовой книге;  
бербоут-чартерном реестре;  
Российском международном реестре судов. (абзац введен Федеральным законом от 20.12.2005 N 168-ФЗ)

2. Право собственности и иные вещные права на судно, а также ограничения (обременения) прав на него (ипотека, доверительное управление и другие) подлежат регистрации в Государственном судовом реестре или судовой книге.

Право собственности и иные вещные права на судно, зарегистрированное в Российском международном реестре судов, а также ограничения (обременения) прав на него (ипотека, доверительное управление и другие) подлежат регистрации в Российском международном реестре судов, за исключением таких прав и ограничений (обременений) прав на судно, зафрахтованное по договору фрахтования судна без экипажа (бербоут-чарту). (абзац введен Федеральным законом от 20.12.2005 N 168-ФЗ)

### **Article 33. Registers of ships of the Russian Federation**

1. Any vessel shall be subject to registration in one of the registers of ships of the Russian Federation (hereinafter – registers of ships):  
the State Register of Ships;  
a ship book;  
the bareboat charter register of ships;  
the Russian International Register of Ships (paragraph was introduced by the Federal Law dated 20.12.2005 No. 168-FZ )

2. The right of ownership and other property rights to the vessel, as well as restrictions (encumbrances) of the rights to the vessel (mortgage, trust administration and others) shall be subject to registration in the State Register of Ships or a ship book.

The right of ownership and other property rights to the vessel registered in the Russian International Register of Ships as well as restrictions (encumbrances) of the rights to the vessel (mortgage, trust administration and others) shall be registered in the Russian International Register of Ships, save for such rights and restrictions (encumbrances) of the rights to the vessel which is chartered without crew (on a bareboat charter) (paragraph was introduced by the Federal Law dated 20.12.2005 No. 168-FZ)  
Registration of the vessel which has restrictions (encumbrances) with the



Регистрация в Российском международном реестре судов судна, имеющего ограничения (обременения), и исключение из указанного реестра такого судна осуществляются с согласия в письменной форме лица, в пользу которого установлено соответствующее ограничение (обременение).  
(абзац введен Федеральным законом от 20.12.2005 N 168-ФЗ)

3. Регистрация судна в Государственном судовом реестре, Российском международном реестре судов или судовой книге, права собственности и иных вещных прав на судно, а также ограничений (обременений) прав на него является единственным доказательством существования зарегистрированного права, которое может быть оспорено только в судебном порядке.  
(в ред. Федерального закона от 20.12.2005 N 168-ФЗ)

4. Реестры судов, предусмотренные пунктом 1 настоящей статьи, ведутся в соответствии с правилами, установленными настоящей главой. Правила регистрации судов и прав на них в морских портах утверждаются федеральным органом исполнительной власти в области транспорта.  
(в ред. Федерального закона от 08.11.2007 N 261-ФЗ)

5. В Государственном судовом реестре регистрируются суда, технический надзор за которыми осуществляется органами технического надзора и классификации судов в соответствии с пунктом 2 статьи 23 настоящего Кодекса. В судовых книгах регистрируются суда, технический надзор за которыми осуществляется другими органами в соответствии с пунктом 3 статьи 23

Russian International Register of Ships and deletion of the vessel from such register is performed upon written consent of a person in which favor the respective restriction (encumbrance) was created (paragraph was introduced by the Federal Law dated 20.12.2005 No. 168-FZ)

3. Registration of the vessel, the right of ownership or other property rights to the vessel, as well as restrictions (encumbrances) of the rights to the vessel in the State Register of Ships, the Russian International Register of Ships or a ship book shall be deemed the only evidence of the existence of the registered right, which may be disputed only in court (as amended by the Federal Law dated 20.12.2005 No. 168-FZ)

4. Registers of ships specified in paragraph 1 of this Article shall be kept according to the regulations set out in this Chapter. Rules of registration of vessels and rights to them in seaports shall be approved by the federal executive authority on transport fishery (as amended by Federal Law dated 08.11.2007 No. 261-FZ).

5. The vessels, technical survey of which is carried out by the technical survey and vessel classification authorities in accordance with item 2 of Article 23 of this Code, shall be registered in the State Register of Ships. The vessels, technical survey of which is carried out by other authorities in accordance with item 3 of article 23 of this Code, shall be registered in ship books. Boats and other floating means

настоящего Кодекса.

В Государственном судовом реестре и судовых книгах не регистрируются шлюпки и иные плавучие средства, которые являются принадлежностями судна.

6. В бербоут-чартерном реестре регистрируются суда, которым в соответствии с пунктами 2 и 3 статьи 15 настоящего Кодекса временно предоставлено право плавания под Государственным флагом Российской Федерации.

7. В Российском международном реестре судов регистрируются суда, которые используются для международных перевозок грузов, пассажиров и их багажа, а также для оказания иных связанных с осуществлением указанных перевозок услуг. К использованию судов для международных перевозок грузов, пассажиров и их багажа относится также сдача судов в аренду для оказания таких услуг.

Суда, зарегистрированные в Российском международном реестре судов, могут использоваться для перевозок и буксировки в каботаже в соответствии с пунктом 2 статьи 4 настоящего Кодекса. (п. 7 введен Федеральным законом от 20.12.2005 N 168-ФЗ)

### **Статья 35. Органы, осуществляющие регистрацию судов**

1. Регистрация судов, указанных в пункте 2 статьи 23 настоящего Кодекса, осуществляется капитаном морского порта. Информация о зарегистрированных судах рыбопромыслового флота и правах на них ежеквартально представляется капитаном морского порта в

appertaining to a vessel shall be exempt from registration in the State Register of Ships.

6. The vessels temporarily granted the right to fly the State flag of the Russian Federation in accordance with items 2 and 3 of Article 15 shall be registered in the bareboat charter register of ships.

7. The vessels employed for international carriage of goods, passengers and their luggage as well as for rendering of other services related to the said carriages shall be registered in the Russian International Register of Ships. The vessels are deemed to be employed for international carriages of goods, passengers and their luggage as well in cases of leasing (chartering) of the vessels for rendering the said services.

The vessels registered in the Russian International Register of Ships may be used for carriages and towage in cabotage in accordance with item 2 Article 4 of this Code (item 7 was introduced by Federal Law dated 20.12.2005 No. 168-FZ)

### **Article 35. Authorities carrying out registration of vessels**

1. The registration of vessels listed in item 2 of Article 23 of this Code shall be carried out by the harbour master of a seaport. Information on the registered vessels of fish fleet and the rights thereto should be quarterly submitted by the harbour master of a seaport to the federal executive authority in fishery (item 1 as

федеральный орган исполнительной власти в области рыболовства.  
(п. 1 в ред. Федерального закона от 08.11.2007 N 261-ФЗ)

amended by Federal Law dated 08.11.2007 No.261-FZ )

2. Регистрация судов, указанных в пункте 3 статьи 23 настоящего Кодекса, осуществляется органами технического надзора за такими судами.

2. The registration of vessels listed in item 3 of Article 23 of this Code shall be carried out by authorities in charge of technical survey over such vessels.

3. Регистрация судов в Российском международном реестре судов осуществляется капитанами морских портов, перечень которых утверждается Правительством Российской Федерации.  
(п. 3 введен Федеральным законом от 20.12.2005 N 168-ФЗ, в ред. Федерального закона от 08.11.2007 N 261-ФЗ)

3. The registration of vessels in the Russian International Register of Ships shall be carried out by the harbour masters of seaports which are approved by the Government of the Russian Federation (item 3 was introduced by Federal Law dated 20.12.2005 No.168-FZ as amended by Federal Law dated 08.11.2007 No. 261-FZ)

### **Статья 37. Условия регистрации судов**

### **Article 37. Conditions of registration of vessels**

1. Судно может быть зарегистрировано только в одном из реестров судов.

1. A vessel may be registered only in one of the Registers of Ships.

2. Судно, зарегистрированное в реестре судов иностранного государства, может быть зарегистрировано в Государственном судовом реестре, Российском международном реестре судов или судовой книге после исключения из реестра судов иностранного государства и представления свидетельства, удостоверяющего, что судно исключено из такого реестра.

2. A vessel registered in a foreign state's register of ships may be registered in the State Register of Ships, the Russian International Register of Ships or a ship book after it has been deleted from the foreign state's register of ships and upon production a certificate to the effect that the vessel was deleted from such register (as amended by Federal Law dated 20.12.2005 No. 168-FZ)

(в ред. Федерального закона от 20.12.2005 N 168-ФЗ)  
Регистрация судна, зарегистрированного в Государственном судовом реестре, Российском международном реестре судов или судовой книге, в реестре судов иностранного государства не признается,

The registration of a vessel registered in the State Register of Ships, the Russian International Register of Ships or a ship book in a foreign state's register of ships shall not be recognized, unless the vessel is properly deleted from the State Register of Ships, the Russian International Register of Ships or a ship book (as amended by

если судно не исключено в установленном порядке из Государственного судового реестра, Российского международного реестра судов или судовой книги.  
(в ред. Федерального закона от 20.12.2005 N 168-ФЗ)

3. Судно может быть зарегистрировано в Российском международном реестре судов на определенный срок с правом последующего продления этого срока или без установления срока регистрации судна.

Регистрация судна в Российском международном реестре судов подлежит ежегодному подтверждению. Порядок ежегодного подтверждения регистрации судна в Российском международном реестре судов устанавливается правилами регистрации судов и прав на них в морских портах.

(в ред. Федерального закона от 08.11.2007 N 261-ФЗ)

Срок регистрации в Российском международном реестре судов судна, предоставленного российскому фрахтователю по договору фрахтования судна без экипажа (бербоут-чартеру), не может превышать срок действия указанного договора или срок, на который приостановлено право плавания данного судна под флагом иностранного государства. При этом учитывается наименее продолжительный из указанных сроков.

(п. 3 введен Федеральным законом от 20.12.2005 N 168-ФЗ)

**Статья 40. Сведения, подлежащие внесению в бербоут-чартерный реестр и Российский международный реестр судов (в ред. Федерального закона от 20.12.2005 N 168-ФЗ)**

Federal Law dated 20.12.2005 No. 168-FZ)

3. The vessel may be registered in the Russian International Register of Ships for a certain term with the right of subsequent extension of such term or without specifying the term of registration of the vessel.

The registration of the vessel in the Russian International Register of Ships should be confirmed every year. The procedure of annual confirmation of the registration in the Russian International Register of Ships is regulated by the rules of registration of vessels and rights thereto in seaports (as amended by Federal Law dated 08.11.2007 No. 261-FZ)

The term of registration of the vessel in the Russian International Register of Ships chartered without crew (bareboat chartered) by the Russian charterer may not exceed the term of such bareboat charter or the term for which the right of such vessel to fly the flag of the foreign state is suspended. The shortest term should count (item 3 was introduced by Federal Law dated 20.12.2005 No.168-FZ)

**Article 40. Information to be entered in the bareboat charter register of ships and Russian International Register of Ships (as amended by Federal Law dated 20.12.2005 No. 168-FZ)**

1. Регистрация судов осуществляется в бербоут-чартерном реестре на имя фрахтователя судна по бербоут-чартеру.

2. В бербоут-чартерный реестр вносятся следующие основные сведения:  
название судна;  
имя и адрес собственника судна;  
имя и адрес фрахтователя судна по бербоут-чартеру;  
дата заключения бербоут-чартера и срок его действия;  
дата окончания срока, на который судну предоставлено право плавания под Государственным флагом Российской Федерации;  
сведения о реестре судов иностранного государства, в котором зарегистрировано судно непосредственно до смены флага, с указанием на то, что законодательство государства, в котором ведется такой реестр, применяется в отношении права собственности на судно, а также ипотеки судна или обременения судна того же характера, зарегистрированных в таком реестре.  
По просьбе залогодержателя ипотеки судна или обременения судна того же характера в бербоут-чартерный реестр могут быть внесены имя залогодержателя и другие данные, касающиеся ипотеки судна или обременения судна того же характера, зарегистрированных в реестре судов иностранного государства до смены флага судна.

3. Регистрация судна в Российском международном реестре судов осуществляется на имя собственника судна или на имя фрахтователя судна по бербоут-чартеру. (п. 3 введен Федеральным законом от 20.12.2005 N 168-ФЗ)

1. Registration of vessels shall be carried out in the bareboat charter register of ships in the name of the bareboat charterer of the vessel.

2. The following basic information shall be entered into the bareboat charter register of ships:  
name of the vessel;  
name and address of the owner of the vessel;  
name and address of the bareboat charterer of the vessel;  
execution date of the bareboat charter and its effective period;  
date of expiry of the right granted to the vessel to fly the State Flag of the Russian Federation;  
information on the register of ships of the foreign state, where the vessel was registered immediately before the change of flag, and note to the effect that the laws of the state keeping such register of ships is applicable in respect of the right of ownership of the vessel, as well as in respect of mortgage on the vessel or encumbrance of the same nature, registered in such register of ships.  
At the request of the holder of a mortgage on the vessel or encumbrance of the same nature, the name of the mortgagee and other information relating the mortgage on the vessel or encumbrance of the same nature registered in the register of ships of the foreign state before the change of flag, may be entered into the bareboat charter register of ships.

3. Registration of the vessel in the Russian International Register of Ships is carried out in the name of the owner of the ship or in the name of the bareboat charterer of the ship (item 3 was introduced by Federal Law dated 20.12.2005 No. 168-FZ)

4. При регистрации судна на имя собственника судна в Российский международный реестр судов вносятся сведения, указанные в пунктах 2 и 3 статьи 39 настоящего Кодекса. При регистрации судна на имя фрахтователя судна по бербоут-чартеру в Российский международный реестр судов вносятся сведения, указанные в пункте 2 настоящей статьи. (п. 4 введен Федеральным законом от 20.12.2005 N 168-ФЗ)

**Статья 42. Первоначальная регистрация судна в Государственном судовом реестре, Российском международном реестре судов или судовой книге (в ред. Федерального закона от 20.12.2005 N 168-ФЗ)**

Первоначальная регистрация построенного судна должна быть осуществлена в Государственном судовом реестре, Российском международном реестре судов или судовой книге в течение одного месяца со дня спуска его на воду, приобретенного за пределами Российской Федерации судна - в течение одного месяца со дня его прибытия в морской порт Российской Федерации. (в ред. Федерального закона от 20.12.2005 N 168-ФЗ)

**Статья 46. Отказ в регистрации судна и прав на него**

В регистрации судна и прав на него может быть отказано в случае, если: с заявлением о регистрации обратилось ненадлежащее лицо; не соблюдены требования, предусмотренные абзацем первым пункта 2 статьи 37 настоящего Кодекса, об исключении судна из прежнего

4. In the event of registration in the name of the owner of the ship, the Russian International Register of Ships should include information stated in items 2 and 3 of Article 39 of this Code. In the event of registration in the name of the bareboat charterer the Russian International Register of Ships should include information stated in item 2 of this Article (item 4 was introduced by Federal Law dated 20.12.2005 No. 168-FZ)

**Article 42. Initial registration of a vessel in the State Register of Ships, the Russian International Register of Ships or a ship book (as amended by Federal Law dated 20.12.2005 No. 168-FZ)**

The initial registration of a newly built vessel shall be carried out in the State Register of Ships, the Russian International Register of Ships or a ship book within one month after the date of launching, and within one month after the vessel's arrival at the seaport of the Russian Federation with regard to the vessel purchased outside the Russian Federation (as amended by Federal Law dated 20.12.2005 No. 168-FZ)

**Article 46. Refusal to register a vessel and the rights to it**

Registration of the vessel and the rights to it may be refused in the event that: the application for registration was made by a wrong person; the requirements specified in sub item 1 of item 2 of Article 37 of this Code on the deregistration of the vessel from the former register of ships have not been met;

реестра судов;  
документы, представленные на регистрацию прав на судно, не соответствуют требованиям, предусмотренным законодательством Российской Федерации;  
лицо, выдавшее правоустанавливающий документ о судне, не уполномочено распоряжаться правами на судно;  
правоустанавливающий документ о судне свидетельствует об отсутствии у заявителя прав на судно;  
права на судно, о регистрации которых просит заявитель, не являются правами, подлежащими регистрации в соответствии с настоящим Кодексом.

#### **Статья 376. Регистрация ипотеки судна или строящегося судна**

1. Ипотека судна регистрируется в том же реестре, в котором зарегистрировано судно.
2. Ипотека иностранного судна, которому временно предоставлено право плавания под Государственным флагом Российской Федерации в соответствии с пунктами 2 и 3 статьи 15 настоящего Кодекса, а также ипотека судна, строящегося для иностранного получателя, не может быть зарегистрирована в Российской Федерации.
3. Ипотека строящегося судна регистрируется в реестре строящихся судов, в котором зарегистрировано право собственности на строящееся судно. Право собственности на строящееся судно может быть зарегистрировано в реестре строящихся судов при условии закладки киля или проведения подтвержденных заключением эксперта равноценных строительных работ. При

the papers submitted for the registration of rights to the vessel do not comply with the requirements stipulated by the laws of the Russian Federation;  
the person who issued the title document to the vessel is not entitled to dispose of the rights to the vessel;  
the title document to the vessel proves that the applicant has no right to the vessel;  
the rights to the vessel, which the applicant requests to register, are not the rights subject to registration in accordance with this Code.

#### **Article 376. Registration of a mortgage on a vessel or vessel under construction**

1. A mortgage on a vessel shall be registered in the same register where the vessel is registered.
2. A mortgage of a foreign vessel to which the right to fly the State flag of the Russian Federation is granted temporarily in accordance with items 2 and 3 of article 15 of this Code, as well as a mortgage of a vessel being constructed for a foreign purchaser, may not be registered in the Russian Federation.
3. A mortgage of a vessel under construction shall be registered in the Register of Vessels under Construction where the right of ownership of the vessel under construction is registered. The right of ownership to the vessel under construction may be entered in the Register of Vessels under Construction, provided that the keel was laid or performing of equivalent constructional work confirmed

регистрации права собственности на строящееся судно выдается соответствующее свидетельство.

4. Реестр строящихся судов, которые после постройки считаются морскими судами, ведется в морских портах, расположенных вблизи судостроительных организаций. Правила регистрации прав на строящиеся суда в морских портах утверждаются федеральным органом исполнительной власти в области транспорта. (п. 4 в ред. Федерального закона от 08.11.2007 N 261-ФЗ)

by an expert's opinion. After the registration of the right of ownership to the vessel under construction a respective certificate shall be issued.

4. The Register of Vessels under Construction which after completion of construction are deemed to be seagoing vessels, shall be kept at the seaports located nearby shipbuilding organizations. The rules on registration of the rights to vessels under construction at seaports are approved by the federal executive authority on transport (item 4 as amended by Federal Law dated 08.11.2007 No. 261-FZ)



### **Annex 3 the RF CC (Extract)**

#### **Статья 8. Основания возникновения гражданских прав и обязанностей**

1. Гражданские права и обязанности возникают из оснований, предусмотренных законом и иными правовыми актами, а также из действий граждан и юридических лиц, которые хотя и не предусмотрены законом или такими актами, но в силу общих начал и смысла гражданского законодательства порождают гражданские права и обязанности.

В соответствии с этим гражданские права и обязанности возникают:

- 1) из договоров и иных сделок, предусмотренных законом, а также из договоров и иных сделок, хотя и не предусмотренных законом, но не противоречащих ему;
- 2) из актов государственных органов и органов местного самоуправления, которые предусмотрены законом в качестве основания возникновения гражданских прав и обязанностей;
- 3) из судебного решения, установившего гражданские права и обязанности;
- 4) в результате приобретения имущества по основаниям, допускаемым законом;
- 5) в результате создания произведений науки, литературы, искусства, изобретений и иных результатов интеллектуальной деятельности;
- 6) вследствие причинения вреда другому лицу;
- 7) вследствие неосновательного обогащения;
- 8) вследствие иных действий граждан и

#### **Article 8. The grounds for arising of the civil rights and duties**

1. The civil rights and duties shall arise from the grounds, stipulated by the law and by the other legal acts, as well as from the actions of the citizens and of the legal entities, which, though not stipulated by the law or by such acts, still cause, by force of the general principles and of the meaning of the civil legislation, the civil rights and duties. In conformity with this, the civil rights and duties shall arise:

- 1) from the law-stipulated contracts and other deals, and also from the contracts and other deals, which, though not stipulated by the law, are not in contradiction with it;
- 2) from the acts of the state bodies and of the local self-government bodies, which are stipulated by the law as the grounds for the arising of the civil rights and duties;
- 3) from the court decision, which has established the civil rights and duties;
- 4) as a result of the acquisition of property on the grounds, admitted by the law;
- 5) as a result of creating the works of science, literature and art, of making inventions and producing other results of the intellectual activity;
- 6) as a result of inflicting damage to another person;
- 7) as a consequence of an unjust enrichment;
- 8) because of other actions performed by the citizens and the legal entities;
- 9) as a result of the events, with which the law or the other legal act connects the arising of the civil legislation consequences.

юридических лиц;

9) вследствие событий, с которыми закон или иной правовой акт связывает наступление гражданско-правовых последствий.

2. Права на имущество, подлежащие государственной регистрации, возникают с момента регистрации соответствующих прав на него, если иное не установлено законом.

### **Статья 130. Недвижимые и движимые вещи**

1. К недвижимым вещам (недвижимое имущество, недвижимость) относятся земельные участки, участки недр и все, что прочно связано с землей, то есть объекты, перемещение которых без несоразмерного ущерба их назначению невозможно, в том числе здания, сооружения, объекты незавершенного строительства.

(в ред. Федеральных законов от 30.12.2004 N 213-ФЗ, от 03.06.2006 N 73-ФЗ, от 04.12.2006 N 201-ФЗ)

К недвижимым вещам относятся также подлежащие государственной регистрации воздушные и морские суда, суда внутреннего плавания, космические объекты. Законом к недвижимым вещам может быть отнесено и иное имущество.

2. Вещи, не относящиеся к недвижимости, включая деньги и ценные бумаги, признаются движимым имуществом. Регистрация прав на движимые вещи не требуется, кроме случаев, указанных в законе.

2. The rights to the property, liable to the state registration, shall arise from the moment of the registration of the corresponding rights to it, unless otherwise stipulated by the law.

### **Article 130. The Movables and the immovables**

1. To the immovables (the immovable property, realty) shall be referred the land plots, subsoil plots and everything which is closely connected with the land, that is, such objects as cannot be moved without causing enormous damage to their purpose, including buildings, structures, incompleting constructions (as amended by Federal Laws dated 30.12.2004 No. 213-FZ, dated 03.06.2006 No. 73-FZ and dated 04.12.2006 No.201-FZ)

To the immovables shall also be referred the air-borne and seagoing vessels, the inland navigation ships and the space objects which are subject to the state registration. The law may also refer to the immovables certain other property.

2. The things, which have not been referred to the immovables, including money and securities, shall be regarded as the movables. The registration of the rights to the movables shall not be required, with the exception of the cases, provided by the law.

**Annex 4 Federal law On the state registration of the rights to real estate objects and the deals thereto (Extract)**

**Статья 4. Обязательность государственной регистрации прав на недвижимое имущество и сделок с ним**

1. Государственной регистрации подлежат права собственности и другие вещные права на недвижимое имущество и сделки с ним в соответствии со статьями 130, 131, 132 и 164 Гражданского кодекса Российской Федерации, за исключением прав на воздушные и морские суда, суда внутреннего плавания и космические объекты. Наряду с государственной регистрацией вещных прав на недвижимое имущество подлежат государственной регистрации ограничения (обременения) прав на него, в том числе сервитут, ипотека, доверительное управление, аренда. Ограничения (обременения) прав на недвижимое имущество, возникающие на основании договора либо акта органа государственной власти или акта органа местного самоуправления, подлежат государственной регистрации в случаях, предусмотренных законом.  
(абзац введен Федеральным законом от 29.12.2004 N 196-ФЗ)

2. Обязательной государственной регистрации подлежат права на недвижимое имущество, правоустанавливающие документы на которое оформлены после введения в действие настоящего Федерального

**Article 4. Obligation of the state registration of the rights to the immovable property and deals thereto**

1. The right of ownership and other property rights to the immovable property and deals thereto are subject to the state registration in accordance with Articles 130, 131, 132 and 164 of the Civil Code of the Russian Federation save for the rights to the airborne and seagoing vessels, inland vessels and space objects. Along with property rights to the immovable property the state registration shall extend as well to the restrictions (encumbrances) of the rights thereto, including servitudes, mortgages, administrative management, lease. Restrictions (encumbrances) to the rights to the immovable property based on the contract or the act of the state body or the act of the municipal body shall be subject to the state registration in the events provided by the law (this item was introduced by Federal Law dated 29.12.2004 No. 196-FZ)

2. The rights to the immovable property are subject to the obligatory state registration when the title documents to such property were furnished after the coming into effect

закона.

**Статья 33. О введении в действие  
настоящего Федерального закона**

1. Настоящий Федеральный закон вводится в действие на всей территории Российской Федерации через шесть месяцев после его официального опубликования. Не позднее указанного срока органы, осуществляющие государственную регистрацию прав, обязаны приступить к ведению Единого государственного реестра прав и выдаче информации о зарегистрированных правах.

Впредь до принятия соответствующих федеральных законов, основанных на положениях пункта 1 статьи 131 Гражданского кодекса Российской Федерации, применяется действующий порядок регистрации прав на воздушные и морские суда, суда внутреннего плавания, космические объекты.

[...]

of this Federal law

**Article 33. On introduction into force of  
this Federal law**

1. This Federal law comes into effect at the entire territory of the Russian Federation after six months as from its official publication. Not later than the stated date, the authorities carrying out the state registration of the rights should assume the keeping of the Unified state register of rights and the issue of information as to the registered rights.

Before adoption of the respective federal laws based on the provisions of item 1 of Article 131 of the Civil Code of the Russian Federation, the rights to the air-borne and seagoing vessels, the inland vessels and space objects shall be registered in the current order of registration.

[...]